

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No: MICT-15-96-A

Date: 19 May 2022

Original: English

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**IN THE APPEALS CHAMBER**

**Before:**  
**Judge Carmel Agius**  
**Judge Lee G. Muthoga**  
**Judge Aminatta Lois Runeni N’gum**  
**Judge Yusuf Aksar**  
**Judge Claudia Hoefler**

**Registrar:** **Abubacarr Tambadou**

**THE PROSECUTOR**

**v.**

**JOVICA STANIŠIĆ**  
**FRANKO SIMATOVIĆ**

**PUBLIC**

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**NOTICE OF FILING OF PUBLIC REDACTED VERSION OF  
PROSECUTION APPEAL BRIEF**

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**The Office of the Prosecutor:**

Laurel Baig  
Barbara Goy

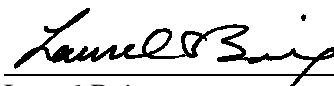
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1. The Prosecution hereby files a public redacted version of its Appeal Brief.<sup>1</sup>



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<sup>1</sup> *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No.MICT-15-96-A, Prosecution Appeal Brief, 22 November 2022.

**UNITED  
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## I. INTRODUCTION

1. In ordering a retrial, the ICTY Appeals Chamber gave clear instructions. The ICTY Appeals Chamber explained how to assess Jovica Stanišić's and Franko (aka Frenki) Simatović's criminal responsibility and ordered a full retrial, without any limitation. The retrial Chamber failed to follow those instructions and erred in assessing Stanišić's and Simatović's liability as members of a joint criminal enterprise (JCE) and as aiders and abettors. In addition, it imposed limitations on the Prosecution's presentation of its case, disregarding the ICTY Appeals Chamber's order.

2. While the Chamber found that a JCE existed, it failed to hold Stanišić and Simatović liable as JCE members, limiting their responsibility to aiding and abetting crimes in one location in Bosnia and Herzegovina (BiH): Bosanski Šamac. This narrow view is not only wrong in law, but also a conclusion that no reasonable trier of fact could have reached on the evidence.

3. The Chamber found that from at least August 1991, individuals at the highest echelons of Serbia's government and security structures, along with Serb leaders in Croatia and BiH, and others pursued a common criminal purpose (CCP) to forcibly and permanently remove non-Serbs from large areas of Croatia and BiH.

4. As will be set out in this Brief, as trusted officials in Serbia's State Security Service (SerbianDB), Stanišić and Simatović organised, trained, armed and financed forces who carried out the ethnic cleansing. Armed and emboldened by Stanišić's and Simatović's training and support, these forces were immediately effective, committing widespread crimes against the non-Serb population in the Serbian Autonomous Region of Krajina (SAO-Krajina) and the Serbian Autonomous Region of Eastern Slavonia, Baranja and Western Srem (SAO-SBWS) of Croatia.

5. Among these forces was the paramilitary unit Stanišić and Simatović selected, trained and armed as their own—the Unit—which, as the Chamber acknowledged, was under their authority from its formation in August/September 1991 until at least mid-April 1992. The Unit was incorporated in the Serbian State Security Service as the Unit for Anti-Terrorist Activities (JATD), which the Chamber found was also under Stanišić's and Simatović's authority from August 1993 until the end of the Indictment period.

6. Observing the fruits of their efforts, Stanišić and Simatović continued to arm, train, support and deploy their Unit and other Serb forces to replicate these results in BiH. Like in Croatia, the effect was immediate: in 1992, these forces drove non-Serbs out of large parts of BiH within months. In early 1993, they torched non-Serb villages across eastern BiH, pushing survivors into small enclaves. In 1994 and 1995, Serb forces trained, armed, financed or deployed by Stanišić and Simatović targeted the few remaining non-Serbs in already cleansed territories and prevented others from returning.

7. As this devastating ethnic cleansing campaign raged on for more than four years, Serb forces—including those armed, trained, supported or deployed by Stanišić and Simatović—murdered, persecuted and forcibly displaced thousands of non-Serbs.

8. Throughout the criminal campaign, Stanišić and Simatović used their skills and resources as highly effective SerbianDB professionals to advance the CCP. Consistent with the SerbianDB's fundamental principle of secrecy, Stanišić and Simatović ensured that their contributions were covert, covering their tracks as true professionals in their field. They engineered and executed every contribution to provide Serbia's JCE members, including themselves, plausible deniability for the persecutory campaign outside Serbia's borders.

9. As a result of these covert actions, this case is complex. The ICTY Trial Chamber erred so fundamentally in adjudicating it that the ICTY Appeals Chamber ordered a full retrial. But, as this appeal shows, the retrial Chamber yet again failed. It is now for the Mechanism Appeals Chamber to correct the Chamber's errors of law and fact and bring justice to the victims.

10. The Chamber committed numerous errors, in law and/or in fact, in its assessment of both the *actus reus* and the *mens rea* for JCE liability. It adopted an erroneously narrow standard for assessing contributions for the purpose of JCE liability, limiting its consideration to conduct that specifically related to charged crimes, and excluding contributions that were not in and of themselves significant (Ground 1(A)(i)). It thus failed to take into account the full extent of the contributions that Stanišić and Simatović made to the CCP. Even on its own erroneously narrow understanding of what can amount to a contribution for the purpose of JCE liability, the Chamber failed to adjudicate contributions that were related to charged crimes—such as earlier training of forces who committed the crimes—or at least did not provide a reasoned opinion why they did not amount to contributions (Ground 1(A)(ii)). The Chamber misinterpreted the Prosecution's position as not having pursued displacement crimes



in Sanski Most in 1995 (Ground 1(A)(iii)) and reached factual conclusions in relation to Stanišić's and Simatović's contributions that no reasonable trier of fact could have reached (Ground 1(A)(iv)). As a result of these errors, the Chamber found that Stanišić and Simatović only contributed to crimes in one location: Bosanski Šamac. Under a correct analysis, Stanišić and Simatović made numerous and varied contributions covering SAO-Krajina, SAO-SBWS and BiH, including through support of operations that did not involve charged crimes, but furthered the CCP of ethnically cleansing large areas of Croatia and BiH.

11. Although—in ordering a retrial—the Appeals Chamber had clearly explained how the shared intent for purposes of JCE liability has to be analysed, the Chamber erred. It assessed individual factors in isolation, applying the beyond reasonable doubt standard to each of them, rather than assessing whether together they showed that Stanišić and Simatović shared the intent (Ground 1(B)(i)). Although it paid lip-service to having considered all relevant factors in its shared intent analysis, the Judgement shows that the Chamber actually disregarded a large number of relevant factors (Ground 1(B)(ii)). On the basis of the totality of the record, no reasonable trier of fact could have reached the conclusion that Stanišić and Simatović did not share the intent for the purposes of JCE liability (Ground 1(B)(iii)).

12. The Chamber also failed to follow the Appeals Chamber's instructions in relation to the procedure of the retrial. The Appeals Chamber ordered a full retrial, without any limitations. Nevertheless, the Chamber curtailed the Prosecution's ability to present its case by essentially limiting the retrial witnesses to those presented in the first trial (Grounds 1(C) and 2(C)).

13. Having found that the Prosecution did not prove Stanišić's and Simatović's liability as JCE members, the Chamber was obliged to analyse their liability under the remaining charged modes of liability. The Chamber failed to do so, limiting its analysis to aiding and abetting in one location only. In the alternative, the Chamber failed to explain why Stanišić and Simatović did not aid and abet crimes in other locations (Ground 2(A)). On the basis of the record of this case, no reasonable trier of fact could have failed to find that Stanišić and Simatović also aided and abetted crimes in SAO-Krajina, SAO-SBWS, Doboj and Sanski Most (Ground 2(B)).

14. The Appeals Chamber should correct the errors the Chamber committed in relation to JCE liability as set out in Ground 1. Should the Appeals Chamber, however, not find Stanišić and Simatović guilty in relation to a certain crime as JCE members, it should find them guilty

under Ground 2 as aiders and abettors, for the crimes included in Ground 2. In its analysis, the Appeals Chamber should include evidence erroneously excluded by the Chamber that is admitted as additional evidence on appeal under IRMCT Rule 142.

## **II. GROUND 1: THE CHAMBER ERRED IN FAILING TO HOLD STANIŠIĆ AND SIMATOVIĆ CRIMINALLY RESPONSIBLE AS MEMBERS OF A JCE**

15. The Chamber erred in law and/or fact in failing to hold Stanišić and Simatović criminally responsible as JCE members for the crimes it found proven, which were committed in the execution of the CCP.

### **A. Sub-ground 1(A): The Chamber erred in law and/or fact in assessing Stanišić's and Simatović's contributions**

16. The Chamber erred in law in adopting an overly narrow legal standard to assess Stanišić's and Simatović's contributions to the CCP. Moreover, even on its own erroneously narrow interpretation, it failed to adjudicate a number of contributions, or at least failed to provide a reasoned opinion. The Chamber erroneously considered that the Prosecution did not pursue contributions in relation to one location. Overall, the Chamber reached conclusions that no reasonable trier of fact could have reached.

#### **1. Sub-ground 1(A)(i): The Chamber adopted incorrect legal standards for assessing contributions**

17. The Chamber adopted an incorrect standard for assessing what can constitute a contribution for the purpose of JCE liability. As set out below, the law is clear that an accused need not directly contribute to specific crimes forming part of the CCP. It is sufficient if an accused contributes to the CCP as a whole. The Chamber thus erred in law when it failed to consider a number of Stanišić's and Simatović's contributions because they did not directly relate to specific charged crimes. Furthermore, the Chamber erred when it improperly assessed the significance of some contributions.

##### **(a) The Chamber erroneously limited the definition of a contribution**

18. In order to assess an accused's contributions for the purpose of JCE liability, the trial chamber must first determine the existence and scope of the CCP.<sup>1</sup> In this case the Chamber found the CCP was to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and BiH.<sup>2</sup> As instructed by the ICTY Appeals Chamber, the Chamber should

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<sup>1</sup> *Stanišić & Simatović* AJ, para.82.

<sup>2</sup> Judgement, para.379.

then have assessed whether the acts performed by Stanišić and Simatović “were related, and contributed, to the perpetration of the common criminal purpose” including those acts not directly involving the commission of a crime.<sup>3</sup>

19. It is at this stage that the Chamber erred. It systematically failed to count conduct of Stanišić and Simatović as contributions because the conduct was not “related” or “linked” to specific charged crimes.<sup>4</sup> In doing so, it ignored the Appeals Chamber’s instructions and Tribunal case law which makes clear that no direct or specific link is required between an accused’s contribution and a particular crime forming part of the CCP.<sup>5</sup> The only contributions the Chamber accepted were contributions to specific charged crimes.<sup>6</sup>

20. Applying this incorrect standard, the Chamber rejected a number of acts that should have been considered contributions because they furthered the CCP. That the Chamber applied this incorrect standard throughout its analysis is also evident in its assessment of contributions not specifically addressed below.<sup>7</sup>

(i) Stanišić and Simatović contributed to the CCP by supporting Serb forces in operations which did not involve charged crimes

21. The Chamber rejected Stanišić’s and Simatović’s contributions to the CCP in relation to “events and operations that [were] not directly related to the charged crimes”.<sup>8</sup> It failed to acknowledge that these events and operations furthered the CCP as a whole.

a. Stanišić and Simatović contributed to the CCP by training Serb forces, who participated in ethnic cleansing operations in Brčko

22. The CCP found by the Chamber is broader than the specific crimes charged in the Indictment and includes forcible and permanent removal of the majority of non-Serbs “from

<sup>3</sup> *Stanišić & Simatović* AJ, para.82. Also *Mladić* AJ, para.179; *Prlić* AJ, para.1535; *Popović* AJ, paras.1378, 1615, 1653; *Krajišnik* AJ, paras.215, 695-696.

<sup>4</sup> See Judgement, paras.162-168, 381, 388, 389, 390, 408, 434, 442, 443, 444, 448, 449, 450, 451, 453, 455, 456, 462, 464, 465, 466, 480, 550, 559, 564, 568, 572. *Below* paras.22-56.

<sup>5</sup> *Karemera* AJ, paras.109, 153; *Prlić* AJ, para.1535.

<sup>6</sup> Judgement, paras.434, 597.

<sup>7</sup> *E.g.* Judgement, paras.408 (“did not prove that these operations resulted in the commission of crimes”), 442 (“in relation to charged crimes”), 443 (“to contribute to the commission of the crimes alleged in the Indictment”), 448-449 (“contributed to the commission of the crimes pleaded in the Indictment”), 450 (“as charged in the Indictment”), 451 (“in particular the commission of crimes pleaded in the Indictment”), 464 (“somehow related to crimes charged in the Indictment.”), 480 (“in particular in relation to the commission of crimes charged in the Indictment”), 559 (“in relation to a crime charged in the Indictment”).

<sup>8</sup> Judgement, para.390.

large areas of Croatia and Bosnia and Herzegovina” from at least August 1991.<sup>9</sup> It therefore included events in Brčko in the Posavina Corridor in 1992. The Chamber did not consider contributions in relation to these events, because it found that they were “not directly related to the charged crimes”.<sup>10</sup>

23. The Chamber’s findings and the evidence show that Stanišić and Simatović furthered the CCP by deploying Unit members to Brčko, where they trained local Serbs and, along with their trainees, targeted non-Serbs through killings, rape, arbitrary arrest, and looting, thereby forcing the non-Serb population to leave.

24. In February 1992,<sup>11</sup> Stanišić and Simatović deployed<sup>12</sup> Unit members to Brčko.<sup>13</sup> The record shows that these Unit members included [REDACTED]<sup>14</sup> and [REDACTED],<sup>15</sup> both of whom had been at Ležimir training camp,<sup>16</sup> which the Chamber found was under Stanišić’s and Simatović’s authority at the time.<sup>17</sup> At Ležimir, [REDACTED] and other Unit members trained local Serbs and formed a “special unit”,<sup>18</sup> which participated along with Arkan’s Serbian Volunteer Guard (SDG) and other paramilitaries in the takeover of Brčko and targeted the non-Serb population.<sup>19</sup> Following the takeover, these groups expelled the non-Serb population by targeting them with crimes such as killings, rape, arbitrary arrests, and looting.<sup>20</sup> Simatović later praised the Unit’s involvement in “the corridor at Brčko”.<sup>21</sup>

25. The record also shows that in June 1992, Simatović sent [REDACTED],<sup>22</sup> Živojin Ivanović aka Crnogorac<sup>23</sup> whom the Chamber acknowledged was the Unit’s commander<sup>24</sup>—

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<sup>9</sup> Judgement, para.379.

<sup>10</sup> Judgement, para.390.

<sup>11</sup> Exh.P03279, p.5.

<sup>12</sup> See Judgement, para.388.

<sup>13</sup> [REDACTED].

<sup>14</sup> See Judgement, fn.47 ([REDACTED]). Also [REDACTED]; [REDACTED].

<sup>15</sup> [REDACTED]; [REDACTED]; [REDACTED]; Exh.1D00067, pp.6-7; [REDACTED].

<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> Exhs.1D00034, p.3; 1D00067, p.7; R.Theunens:Exh.P01980, p.486. Also Exhs.2D00157, pp.2, 4; P03149, pp.3-5.

<sup>19</sup> Exhs.1D00034, pp.2-3; P00811, p.1; P03149, p.3; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>20</sup> Exhs.1D00034, pp.5-6; 1D00905, pp.2-3; [REDACTED]; Exh.2D00083, p.3. Also R.Theunens:Exh.P01980, pp.488-489; G.Stoparić:Exh.P00796, paras.64-65; G.Stoparić:Exh.P00801, para.4; G.Stoparić:T.32-33 (7-Nov-2017); Exh.P00811, pp.1-2; AF880-881, 884, 888.

<sup>21</sup> Exh.P00256, p.11.

<sup>22</sup> [REDACTED]; [REDACTED].

<sup>23</sup> Crnogorac had overseen the training at Ležimir and Pajzoš training camps: A.Vasiljević:T.20-21 (31-Jan-2019); Exhs.P00260, pp.4, 30, 34 [REDACTED]; P03780, p.4; P00059 (00:55:30-00:55:37), p.20. Also Exh.P03036, p.2.

along with other Unit members—to Brčko.<sup>25</sup> Operating under Simatović’s direct authority,<sup>26</sup> Crnogorac took command of all Unit members then present in Brčko,<sup>27</sup> including a group under Unit member Dragan Đorđević aka Crni, which had come to Brčko around the same time, straight from its involvement in ethnic cleansing in Bosanski Šamac.<sup>28</sup> The forces under Crnogorac also expelled Muslims by raping and killing them and looting their property, asserting authority over the local Brčko police to ensure their impunity.<sup>29</sup> [REDACTED],<sup>30</sup> [REDACTED]. [REDACTED].<sup>31</sup>

26. Stanišić and Simatović therefore contributed to the CCP by training, deploying, arming and otherwise supporting Unit members, who participated in ethnic cleansing operations in Brčko.

b. Stanišić and Simatović contributed to the CCP by training, financing, and commanding Serb forces who participated in the 1993 Podrinje ethnic cleansing operations in eastern BiH

27. Given the breadth of the CCP found by the Chamber, which includes forcible and permanent removal of the majority of non-Serbs “from large areas of Croatia and Bosnia and Herzegovina” from at least August 1991,<sup>32</sup> the expulsion of Muslims from eastern BiH in 1993 was also within its scope. However, the Chamber did not consider conduct relating to it as contributions because these events were “not directly related to the charged crimes”.<sup>33</sup>

28. Simatović contributed to the CCP by training Serb forces at Skelani, Mt. Tara and Bratunac, who then participated in the ethnic cleansing operations in eastern BiH in 1993 under the command of Unit members deployed by Stanišić and Simatović. Simatović also

<sup>24</sup> Judgement, para.405.

<sup>25</sup> Exh.1D00067, pp.7-8, 10; [REDACTED]. Also [REDACTED]. See further Exhs.P00258, p.12; P02045, p.3 [REDACTED]; [REDACTED]; [REDACTED].

<sup>26</sup> [REDACTED]; [REDACTED]. For further evidence that Crnogorac was in command of the Unit in June 1992, see Exh.P02725, p.4 (p.14) (BCS). Also Exh.P00260, pp.29-30, 33.

<sup>27</sup> [REDACTED].

<sup>28</sup> Exh.P02045, p.3. Also [REDACTED]. As further evidence of Stanišić’s and Simatović’s responsibility for sending Crni’s group into the Posavina Corridor operations, including subsequent operations in the autumn of 1992, see Exhs.P00845, pp.11, 14; P00846, p.3; P01989, p.1; P01938, pp.256-257. On the presence of Crni in Bosanski Šamac, see Judgement, paras.218, 590.

<sup>29</sup> Exhs.1D00067, pp.7-8; 1D00034, p.5; [REDACTED]; [REDACTED]; Exh.P00811, p.2.

<sup>30</sup> [REDACTED]; [REDACTED].

<sup>31</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. [REDACTED]; [REDACTED]; D.Slišković:Exh.P02538, para.3 [REDACTED]; [REDACTED]; Exh.P02852, p.1 [REDACTED].

<sup>32</sup> Judgement, para.379.

financed and commanded the Skelani Red Berets operating under Unit member Radojica Božović.

29. In June 1992, under Simatović's instruction, Unit member [REDACTED]<sup>34</sup>—who had been an instructor at Pajzoš training camp<sup>35</sup>—established a training camp in Skelani in eastern BiH.<sup>36</sup> There, Unit members such as [REDACTED] and [REDACTED]<sup>37</sup> trained local men from the region.<sup>38</sup> From these trainees, the Unit members formed the Skelani Red Berets.<sup>39</sup>

30. In January 1993, the Skelani Red Berets went to the training camp at Mt. Tara in Serbia.<sup>40</sup> There, the instructors known as “Frenki's Men” offered intensive combat training to various groups, including the Skelani Red Berets.<sup>41</sup> Božović, who the Chamber found to be a Unit member,<sup>42</sup> oversaw the training.<sup>43</sup> Simatović had sent Božović and the instructors to Tara and was often present.<sup>44</sup> Financed by Simatović and under his command,<sup>45</sup> the Skelani Red Berets returned to Skelani in February 1993 under Božović's leadership.<sup>46</sup>

31. Around the same time, Simatović instructed Mijović and Unit members under his command to establish a training camp in Bratunac,<sup>47</sup> where they trained men from the area, integrated them into a subordinate unit financed by the SerbianDB, and led them in ethnic cleansing operations in the Bratunac area.<sup>48</sup>

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<sup>33</sup> Judgement, para.390.

<sup>34</sup> Exh.P00265, p.9; [REDACTED]; [REDACTED]. *See* Judgement, fn.47 ([REDACTED]).

<sup>35</sup> [REDACTED]. *Also* Exh.P00265, p.9. The Chamber found that this training camp was under the authority of Stanišić and Simatović until at least March or April 1992, Judgement, para.409.

<sup>36</sup> M.Deronjić:Exh.P01717, paras.134-139; Exhs.P03600, p.1; P03201, p.1; 2D00089, p.5.

<sup>37</sup> Exh.P00258, pp.12, 28, 32; [REDACTED]; [REDACTED]. *See* Judgement, fn.47 ([REDACTED]).

<sup>38</sup> Exh.P03201, p.1; M.Deronjić:Exh.P01717, paras.139-140.

<sup>39</sup> Exhs.1D00070, p.2; P01942, pp.1, 3-6; M.Milovanović:Exh.P02934, pp.243-244 (T.4623-4624); Exh.P03615, p.2.

<sup>40</sup> Exh.P01942, p.1.

<sup>41</sup> [REDACTED]; RFJ-083:T.30-31, 45, 49 (8-May-2018); [REDACTED]. *Also* [REDACTED]; [REDACTED].

<sup>42</sup> *See* Judgement, para.405.

<sup>43</sup> S.Grekulović:T.28, 31 (8-Oct-2019); S.Grekulović:T.37-38 (9-Oct-2019); Exh.P02834, p.44 [REDACTED]; [REDACTED]. *Also* [REDACTED].

<sup>44</sup> O.Stevanović:T.45 (30-Sep-2020); M.Deronjić:Exh.P01717, para.150; [REDACTED]; [REDACTED]; O.Stevanović:Exh.P03853; Exh.P01943, p.137.

<sup>45</sup> Exhs.P03621, p.2; P01946, pp.1-2; R.Theunens:Exh.P01980, pp.527-528. *Also* Exhs.1D00070, p.2; P01942, p.2.

<sup>46</sup> Exh.P01942, p.2.

<sup>47</sup> M.Deronjić:Exh.P01717, paras.134-139, 145-146; [REDACTED]; P03667, pp.1-2; P01941, p.3 [REDACTED]; P02852, p.1 [REDACTED]; P02834, pp.43, 47 [REDACTED]. *Also* Exhs.P03243; P01949, p.1; P03543, p.4; R.Theunens:Exh.P01980, p.520.

<sup>48</sup> M.Deronjić:Exh.P01717, paras.147-149; R.Theunens:T.20 (16-Mar-2018); Exhs.1D00103, p.1; 2D00833, para.2; 1D00070, p.2; R.Theunens:T.34 (6-Mar-2018); Exhs.P01941, p.3 [REDACTED]; P01940.

32. Both Stanišić<sup>49</sup> and Simatović assisted in planning the ethnic cleansing of eastern BiH in early 1993.<sup>50</sup> In March 1993, under Simatović’s overall command, Božović led “Frenki’s Men” and other SerbianDB-trained forces in ethnic cleansing operations in the Skelani area.<sup>51</sup> [REDACTED].<sup>52</sup> The crimes of “Frenki’s Men” were notorious: they killed civilians and soldiers alike, mutilating their bodies,<sup>53</sup> killing in sadistic ways,<sup>54</sup> and tortured soldiers of the Army of the Republic of Bosnia and Herzegovina (ABiH).<sup>55</sup> While participating in joint operations with the Army of Republika Sprksa (VRS) and the Army of the Federal Republic of Yugoslavia (VJ),<sup>56</sup> [REDACTED].<sup>57</sup>

33. Stanišić and Simatović therefore contributed to the CCP by training, financing and commanding Serb forces who participated in the 1993 Podrinje ethnic cleansing operations.

c. Stanišić and Simatović contributed to the CCP by supporting operations in 1994 and 1995

34. The Chamber failed to consider Stanišić’s and Simatović’s involvement in the 1994 Operation Pauk, the 1995 Treskavica/Trnovo Operations and the Autonomous Region of Krajina (ARK) Operation as contributions to the CCP. The Chamber disregarded contributions relating to these operations because it found that the operations did not relate “to the crimes charged in the Indictment.”<sup>58</sup>

35. The record shows that these three operations furthered the CCP:

<sup>49</sup> M.Milovanović:Exh.P02934, pp.18-21 (T.4383-4386); Exhs.P02267, pp.1-2; P02268; D.Plahuta:T.51(20-Nov-2019).

<sup>50</sup> Exh.P02267, pp.1-2; D.Plahuta:T.51 (20-Nov-2019); Exh.P01943, p.137; [REDACTED]; [REDACTED]; [REDACTED]. *Also* [REDACTED]; [REDACTED].

<sup>51</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; RFJ-083:T.19, 22-23, 29-30, 37-38 (8-May-2018); RFJ-083:T.29-30, 60-63 (10-May-2018). *E.g.* Exhs.P02842, pp.2-4; 1D00093, pp.3, 7 [REDACTED]; P01942, pp.1-2; M.Milovanović:Exh.P02934, pp.243-244 (T.4623-4624).

<sup>52</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>53</sup> [REDACTED].

<sup>54</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>55</sup> [REDACTED]; [REDACTED].

<sup>56</sup> [REDACTED]; Exh.P02060; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Exh.P01944. *Also* [REDACTED].

<sup>57</sup> [REDACTED]; [REDACTED]; [REDACTED]. *Also* M.Deronjić:Exh.P01717, paras.136-137; Exh.P01946, p.1.

<sup>58</sup> *See* Judgement, para.434.



- In November 1994, Stanišić and others launched Operation Pauk to maintain Serb control over previously cleansed territories along the Una River in western BiH and across the border in the Republic of Serbian Krajina (RSK), thus furthering the CCP.<sup>59</sup>
- The 1995 Treskavica/Trnovo Operations furthered the CCP, aiming to separate Serbs from non-Serbs, take the Drina valley, and bolster the Sarajevo front.<sup>60</sup>
- The 1995 ARK Operation furthered the CCP as its aim was to maintain control over previously cleansed territory and drive out the remaining non-Serbs.<sup>61</sup> The Chamber only considered contributions related to specific charged crimes in 1995 in Sanski Most.<sup>62</sup>

36. Stanišić and Simatović contributed to these operations, including as detailed below through the JATD, SDG and Scorpions. The Chamber should have considered these actions as contributions to the CCP.

(ii) Stanišić and Simatović contributed to the CCP by deploying the JATD to operations furthering the CCP

37. The Chamber found that Stanišić and Simatović had authority over the use and deployment of the JATD from its creation in August 1993 until the end of the Indictment period.<sup>63</sup> The Chamber accepted evidence that JATD members were involved in operations in 1994 and 1995, but rejected Stanišić's and Simatović's deployment of JATD members as a contribution because these were military operations which generally did not relate "to the crimes charged in the Indictment".<sup>64</sup> The Chamber overlooked that the 1994 Operation Pauk, the 1995 Treskavica/Trnovo Operations, and the 1995 ARK Operation furthered the CCP.<sup>65</sup>

38. The Chamber acknowledged that there was evidence that the JATD or some of its members took part in the 1994-1995 operations:<sup>66</sup>

<sup>59</sup> See Exhs.P01591; 1D00037, pp.86, 92, 94; M.Milovanović:Exh.P02934, pp.163-164 (T.4540-4541); R.Theunens:T.53-54 (6-Mar-2018); Exh.P01249, pp.9-11, 24-25.

<sup>60</sup> Exhs.P01249, pp.9-11; P01591.

<sup>61</sup> Judgement, paras.277-278; Exhs.P01249, pp.9-11; P01591; R.Donia:T.64, 66-67 (1-Feb-2018); Exh.P01960, pp.78-79; M.Milovanović:Exh.P02935, p.179 (T.15522); [REDACTED]. Also Exhs.2D00078, p.1; 2D00076. Also [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>62</sup> Below paras.75-80.

<sup>63</sup> Judgement, paras.388, 432.

<sup>64</sup> Judgement, para.434.

<sup>65</sup> Above para.35.

<sup>66</sup> Judgement, para.434

- In relation to the 1994 Operation Pauk, the evidence confirms that Stanišić and Simatović deployed and commanded the JATD<sup>67</sup>—over whom the Chamber found they had authority<sup>68</sup>—during the operation. Simatović later lauded their achievements.<sup>69</sup>
- In relation to the 1995 Treskavica/Trnovo Operations,<sup>70</sup> the evidence shows that Stanišić and Simatović deployed their veteran operative Mijović<sup>71</sup> and JATD members.<sup>72</sup> This operation occurred during a time when—according to the Chamber’s own findings—Stanišić and Simatović had authority over the use of deployment of the JATD.<sup>73</sup> Thus, Stanišić and Simatović must have deployed the JATD to this operation.
- In relation to the 1995 ARK Operation, the evidence demonstrates that Stanišić and Simatović deployed the JATD, which was commanded by Božović.<sup>74</sup> Stanišić and Simatović also deployed Dragan Filipović<sup>75</sup>—a SerbianDB official and Simatović’s deputy—to coordinate all SMUP forces in the ARK region.<sup>76</sup>

39. Stanišić and Simatović therefore contributed to the CCP through deployment of JATD members into the 1994 and 1995 operations.

(iii) Stanišić and Simatović contributed to the CCP by supporting Arkan and his SDG

40. The Chamber rejected Stanišić’s and Simatović’s contributions made through Željko Ražnatović aka Arkan and the SDG as it was not satisfied that they made contributions to

<sup>67</sup> E.g. D.Slišković:T.69, 77-79, 83-84 (11-Jul-2018); [REDACTED]; G.Stoparić:Exh.P00796, para.89; R.Theunens:T.55-56 (6-Mar-2018).

<sup>68</sup> Judgement, paras.388, 432.

<sup>69</sup> Exh.P00256, p.11.

<sup>70</sup> Judgement, para.455.

<sup>71</sup> [REDACTED]; P00256 (00:09:50-00:09:56), pp.4-5. See [REDACTED]; D.Slišković:Exh.P02538, para.3 [REDACTED].

<sup>72</sup> Judgement, para.434. See Exh.P03690; [REDACTED]; [REDACTED].

<sup>73</sup> Judgement, para.388.

<sup>74</sup> See [REDACTED]; [REDACTED]; [REDACTED]; Exh.P01960, p.78-79; M.Milovanović:Exh.P02935, T.15522, 15527-15528; [REDACTED]. Also Exh.P03129; S.Grekulović: T.8 (10-Oct-2019); Exh.P00852, p.6.

<sup>75</sup> See Judgement, paras.399, 407. See [REDACTED]; P03195, p.5; P00860.

<sup>76</sup> Exh.P03541; S.Grekulović:T.69 (9-Oct-2019); S.Grekulović:Exh.ID00409, para.18; S.Grekulović:T.3-4 (10-Oct-2019); M.Milovanović:Exh.P02935, T.15522, 15527-15528. Also S.Grekulović:Exh.ID00410, T.15233,15250.

specific SDG members who were “involved in the commission of crimes in Croatia and Bosnia and Herzegovina as charged in the Indictment”.<sup>77</sup>

41. The Chamber found that Arkan was a JCE member,<sup>78</sup> and that he and the SDG participated in the murders, persecution, and forcible displacement committed in the SAO-SBWS in 1991 and 1992, persecution and forcible displacement committed in Bijeljina in 1992, murders, persecution, and forcible displacement committed in Zvornik in 1992, and murders and persecution committed in Sanski Most in 1995.<sup>79</sup> These crimes furthered the CCP as they forced non-Serbs to leave.<sup>80</sup> Nevertheless, the Chamber failed to analyse whether Stanišić’s and Simatović’s support for Arkan and the SDG furthered the CCP as a whole.

42. In relation to SAO-SBWS the Chamber rejected Stanišić’s and Simatović’s contributions via Arkan and the SDG because the Prosecution had not identified instances of them providing “specific logistical or financial support to, or being involved in the operations of, Arkan and his Serbian Volunteer Guard in their commission of crimes charged in the Indictment”.<sup>81</sup> The Chamber failed to analyse whether Stanišić’s and Simatović’s logistical or financial support to, or their involvement in the operations of, Arkan and the SDG contributed to their acts that furthered the CCP.

43. In relation to the 1995 ARK Operation (which included Sanski Most), the Chamber dismissed evidence that Stanišić and Simatović financed the SDG, analysing only whether they financed specific members who participated “specifically in the crimes charged”.<sup>82</sup> In fact, the evidence makes clear that the SerbianDB financed the SDG throughout 1995, including during the Sanski Most operations that forced non-Serbs from the area. The Chamber erred in finding otherwise, as is demonstrated further below.<sup>83</sup>

44. The Chamber accepted evidence of Stanišić’s and Simatović’s involvement with the SDG in the 1994 Operation Pauk and the 1995 Treskavica/Trnovo Operations,<sup>84</sup> but dismissed that involvement as a contribution on the sole basis that those operations were not directly

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<sup>77</sup> Judgement, para.456. *Also* Judgement, para.442.

<sup>78</sup> Judgement, para.380.

<sup>79</sup> Judgement, para.442.

<sup>80</sup> *See* Judgement, paras.169, 278.

<sup>81</sup> Judgement, para.444.

<sup>82</sup> Judgement, para.453.

<sup>83</sup> *Below* paras.81-94, 113-116.

<sup>84</sup> *Above* para.35.

related to crimes charged.<sup>85</sup> However, as demonstrated above, those operations furthered the CCP, and Stanišić and Simatović contributed to each operation through the SDG:

- Stanišić and Simatović supported the SDG<sup>86</sup> during the 1995 Treskavica/Trnovo Operations,<sup>87</sup> where Vasilije Mijović commanded<sup>88</sup> the SDG,<sup>89</sup> as part of the combined SerbianDB Units.<sup>90</sup> [REDACTED]<sup>91</sup> [REDACTED]<sup>92</sup> [REDACTED];<sup>93</sup> and
- The evidence shows that Stanišić and Simatović financed the SDG in relation to Operation Pauk.<sup>94</sup>

45. Stanišić and Simatović therefore contributed to the CCP by supporting SDG members in relation to the 1994 Operation Pauk and the 1995 Treskavica/Trnovo Operations.

(iv) Stanišić and Simatović contributed to the CCP by supporting the Scorpions

46. The Chamber dismissed as a potential contribution to the CCP Stanišić's and Simatović's support of the Scorpions, because the Prosecution had not proven beyond reasonable doubt that Stanišić and Simatović supported the Scorpions in the operations "during which the charged crimes occurred".<sup>95</sup> The Chamber failed to analyse whether Stanišić's and Simatović's support to the Scorpions amounted to a contribution that furthered the CCP overall.

47. The Chamber acknowledged evidence that Stanišić and Simatović were involved with the Scorpions in relation to the 1994 Operation Pauk, but rejected this as a contribution because it was a military operation which, for the most part, did not "directly relate to the crimes charged in the Indictment."<sup>96</sup> The Chamber overlooked that this operation furthered

<sup>85</sup> Judgement, para.455.

<sup>86</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>87</sup> Judgement, para.455.

<sup>88</sup> [REDACTED]; [REDACTED]; Exh.P01081, pp.103-105; [REDACTED]; [REDACTED]; R.Theunens:Exh.P01980, pp.191-192, 554-555.

<sup>89</sup> S.Novaković:T.54 (6-Oct-2020); S.Novaković:T.17-18 (8-Oct-2020); Exh.P03858, p.7; [REDACTED].

<sup>90</sup> E.g. Exhs.P03525, p.2; P03526, p.1; P02333; O.Stevanović:T.42 (29-Sep-2020).

<sup>91</sup> [REDACTED].

<sup>92</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>93</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>94</sup> Judgement, para.455. Also [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>95</sup> Judgement, para.462.

<sup>96</sup> Judgement, para.465. Also Judgement, para.466 ("in relation to the crimes charged in the Indictment").

the CCP, as demonstrated above.<sup>97</sup> Stanišić and Simatović deployed,<sup>98</sup> funded and equipped<sup>99</sup> the Scorpions for the 1994 Pauk Operation.

48. Stanišić and Simatović therefore contributed to the CCP by supporting the Scorpions.

(v) Stanišić and Simatović contributed to the CCP by deploying Unit members to Western Srem operations

49. The Chamber acknowledged evidence that the Unit participated in combat operations in Western Srem,<sup>100</sup> where crimes were committed that forced the non-Serb population to leave the area.<sup>101</sup> It dismissed this as a potential contribution, finding that the evidence was “insufficient to conclude that Unit members were involved in the commission of charged crimes”.<sup>102</sup> Had it properly assessed this contribution, it would have found that Unit members furthered the CCP through their participation in the Western Srem operations, as demonstrated below.<sup>103</sup>

(vi) Stanišić contributed to the CCP through his contacts with Radovan Karadžić

50. The Chamber found that Stanišić communicated with JCE member Radovan Karadžić<sup>104</sup> prior to and following the establishment of the *Republika Srpska* (RS), and at times facilitated contact between Karadžić and Slobodan Milošević.<sup>105</sup> It dismissed this as a potential contribution because it was not convinced that these communications demonstrated the concrete nature of Stanišić’s involvement in the creation of Serb structures in BiH “related to the commission of crimes charged”.<sup>106</sup>

51. Had the Chamber analysed these communications correctly, it would have found that they did constitute contributions to the CCP. Those contacts were made in order to facilitate

<sup>97</sup> Above para.35.

<sup>98</sup> Judgement, para.465; R.Theunens:T.49-50 (13-Mar-2018). Stanišić told Ratko Mladić, in relation to the second deployment of Scorpions in April 1995, “I sent 150 men from Slavonija through Pauk...the crossing had to be done quietly”, which was facilitated at the Rača border crossing by Stanišić’s JATD operative. Z.Raić:Exh.1D00057, pp.72-73; [REDACTED]; Exhs.P02415 (00:24:00-00:26:00); P00240; [REDACTED]; RFJ-066:T.29 (10-Jul-2017).

<sup>99</sup> G.Stoparić:Exh.P00796, paras.73-74, 78, 87; [REDACTED]; G.Stoparić:T.59-60 (7-Nov-2017); G.Stoparić:T.24 (9-Nov-201).

<sup>100</sup> Judgement, para.162.

<sup>101</sup> Judgement, para.168.

<sup>102</sup> Judgement, para.162.

<sup>103</sup> Below paras.96-102.

<sup>104</sup> Judgement, para.380.

<sup>105</sup> Judgement, paras.556, 572.

<sup>106</sup> Judgement, paras.550, 572 (“to the commission of the crimes charged in the Indictment”).

the establishment of the Serb structures through which the CCP was implemented in BiH from April 1992.<sup>107</sup>

(vii) Stanišić and Simatović contributed to the CPP through the RS-SNB and other intelligence groups

52. The Chamber found that the SerbianDB had contact with intelligence groups, and that, through them, Stanišić and Simatović received information on the political and security situation in RS and other areas of the former Yugoslavia.<sup>108</sup> It dismissed this as a potential contribution because it was unable to determine whether the use of these intelligence groups “contributed to or was done in furtherance of crimes committed in [BiH] that may be attributed to the Accused”.<sup>109</sup>

53. Had the Chamber analysed the use of these intelligence groups correctly, it would have found that Stanišić and Simatović used those groups to ensure that they had sufficient information and influence to advance the CCP in BiH.

54. The evidence shows that Bosnian Serb personnel employed within the BiH’s State Security Department (DB) covertly channeled information to the SerbianDB starting in mid-1991. Under the code-name “Miloš”, a Serb in the Banja Luka’s DB bypassed official channels, reported directly to Stanišić and Simatović, and took instructions from the SerbianDB on arming Serbs, among other activities.<sup>110</sup> Stanišić retained control over the “Miloš” group once they came under the National Security Service of the RS-MUP (RS-SNB) and as the conflict unfolded.<sup>111</sup> Furthermore, the RS-SNB (the RS-MUP’s DB equivalent) received instructions from the SerbianDB.<sup>112</sup>

55. Stanišić’s and Simatović’s control over the RS-MUP/SNB extended to the Banja Luka-based Tajfun/Sigma intelligence group. In March 1992, the SerbianDB began equipping the Tajfun group, which in turn reported to the SerbianDB, coordinating in line with the “concept of unification into Serbian states”.<sup>113</sup> Tajfun operated outside the official channels

<sup>107</sup> Judgement, paras.181, 218, 222, 234, 252-253, 278.

<sup>108</sup> Judgement, para.564.

<sup>109</sup> Judgement, para.564.

<sup>110</sup> [REDACTED]; P00854, p.1; [REDACTED]; C.Nielsen:T.2-3 (15-Nov-2017) (Stanišić’s initials are on Exh.P00835, p.1(BCS)); C.Nielsen:T.99(23-Nov-2017); C.Nielsen:Exh.P00850, para.858; Exh.P03506, p.8.

<sup>111</sup> *E.g.* [REDACTED]; P03473; P03481; P03482; P01713; P03178. *Also* [REDACTED].

<sup>112</sup> [REDACTED]; Exh.P03513, p.4 [REDACTED]. *Also* C.Nielsen:Exh.P00850, para.872; Exhs.P03501; P03506, p.8; P03507, p.1.

<sup>113</sup> Exh.P00853, pp.1-2.

for the needs of the SMUP.<sup>114</sup> It later became Sigma, and was incorporated by Simatović into the SerbianDB intelligence system in 1994.<sup>115</sup> Sigma reported directly to Simatović and took instruction from, and provided intelligence to, Stanišić and Simatović regarding the situation in RS.<sup>116</sup>

56. Stanišić and Simatović therefore contributed to the CCP through the RS-SNB and other intelligence groups.

(b) The Chamber incorrectly assessed the significance of Stanišić's and Simatović's contributions

57. The Chamber erred in law when it disregarded contributions, because it considered that—individually—they were not significant enough. To be responsible for a crime as a member of a JCE, an accused's conduct must in some way significantly contribute to furthering the CCP.<sup>117</sup> The significance is to be assessed on the basis of the totality of an accused's contributions analysed together.<sup>118</sup>

58. In at least two instances the Chamber rejected contributions because they were not found to be “a significant contribution” to the charged crimes. On this basis, the Chamber disregarded Stanišić's and Simatović's contributions through: (i) Arkan and the SDG<sup>119</sup> and (ii) the Scorpions<sup>120</sup> in relation to the 1994 Operation Pauk and the 1995 Treskavica/Trnovo Operations.<sup>121</sup>

59. In doing so, the Chamber erred in failing to include these contributions in its assessment of Stanišić's and Simatović's contributions to the CCP.

<sup>114</sup> R.Donia:Exh.P01597, p.86. Also Exhs.1D00081, p.114; P02888, p.320; P02896, p.30; C.Nielsen:Exh.P00850, paras.909-920.

<sup>115</sup> Exhs.P00860; 1D00037, p.136.

<sup>116</sup> Exhs.P03509; P03510; P03512; P03513 [REDACTED]; P03514; P03515; P03516; P03517 [REDACTED]; P03518 [REDACTED]; P03519; C.Nielsen:Exh.P00850, para.916. Stanišić's and/or Simatović's initials at the top of the reports indicate that they familiarised themselves with their contents. See R.Mičić:T.4 (4-Mar-2020).

<sup>117</sup> *Stanišić & Župljanin* AJ, para.110; *Krajišnik* AJ, para.696; *Kvočka* TJ, para.309; *Kvočka* AJ, paras.93-99.

<sup>118</sup> *Tolimir* TJ, paras.1093-1095; *Tolimir* AJ, para.377; *Stanišić & Župljanin* TJ, Vol.2, para.518; *Stanišić & Župljanin* AJ, para.905; *Šainović* AJ, paras.987-989; *Krajišnik* AJ, paras.216-218.

<sup>119</sup> Judgement, para.455.

<sup>120</sup> Judgement, para.465.

<sup>121</sup> Judgement, para.455.

2. Sub-ground 1(A)(ii): The Chamber failed to adjudicate all of Stanišić's and Simatović's alleged contributions and/or failed to provide a reasoned opinion why it disregarded relevant conduct

60. In assessing Stanišić's and Simatović's contributions, the Chamber failed to adjudicate alleged contributions or, in the alternative, failed to provide a reasoned opinion explaining why the conduct was not a contribution for the purposes of JCE liability.<sup>122</sup> Had the Chamber properly adjudicated these contributions, even applying its erroneously narrow legal standard,<sup>123</sup> it would have found that this conduct contributed to the CCP.

(a) Stanišić and Simatović contributed to the CCP by deploying Unit members who committed crimes in Bilje

61. The Chamber failed to adjudicate whether Stanišić and Simatović contributed to the CCP by deploying Unit members who committed crimes in Bilje in Baranja.

62. The Chamber found that in early September 1991, Serb forces attacked Bilje, committing wide-ranging crimes and causing most non-Serbs to flee.<sup>124</sup>

63. However, the Chamber failed to adjudicate whether Stanišić and Simatović contributed to the CCP by deploying Unit members who participated in the Bilje attack, as argued by the Prosecution in its Final Trial Brief.<sup>125</sup>

64. Had this matter been adjudicated, the Chamber would have found that Stanišić and Simatović contributed to the CCP by deploying the Unit to Bilje where they expelled most of the non-Serb population.<sup>126</sup> The record shows that at least three men identified by the Chamber as Unit members—[REDACTED],<sup>127</sup> Milenko Popović,<sup>128</sup> and Nikola Pilipović<sup>129</sup>—participated in the Bilje attack:

- [REDACTED]<sup>130</sup> [REDACTED];<sup>131</sup>

<sup>122</sup> Judgement, paras.382-572.

<sup>123</sup> *Above* paras.17-19.

<sup>124</sup> Judgement, paras.150-151. *Also* Judgement, paras.156, 169-170, 312, 316.

<sup>125</sup> *See* Prosecution-FTB, paras.111, 279, 363, 421-423, fn.457.

<sup>126</sup> Judgement, paras.150-151, 156, 169-170, 312, 316.

<sup>127</sup> [REDACTED].

<sup>128</sup> Judgement, fn.1709.

<sup>129</sup> Judgement, fn.47.

<sup>130</sup> The Chamber found that Stanišić and Simatović contributed to training at Golubić camp, Judgement, paras.397, 409.



- Popović trained at Golubić in June 1991 and joined the Unit on 2 July 1991. He participated in all operations “in which the then special unit from the fortress participated”, including Bilje;<sup>132</sup> and
- Pilipović trained at Golubić in June 1991 and joined the Unit in July 1991. He “participated in all the actions of the unit”, including “in the group for the liberation of Baranja (Bilje).”<sup>133</sup>

65. The record further shows that Unit member Borislav Kovačević, whose personnel file the Chamber relied upon in support of its conclusions regarding the Bilje operation,<sup>134</sup> also participated in the attack:

- Kovačević joined the Unit in July 1991 and was an original trainer at Golubić. He “participated in all of the Unit’s operations.”<sup>135</sup> As a member of the Unit, he was gifted a pistol by the SMUP in recognition of his efforts during the Bilje operation.<sup>136</sup>

66. The Unit’s involvement in Bilje is further supported by Simatović himself, who acknowledged the Unit’s participation in operations in Baranja,<sup>137</sup> which includes Bilje.<sup>138</sup>

67. Given the Chamber’s finding that Stanišić and Simatović exercised authority over the Unit and determined its use and deployment from its establishment in August or September 1991 until at least mid-April 1992,<sup>139</sup> the Unit would have been deployed by Stanišić and Simatović to the September 1991 Bilje operation. This would have been the case regardless of who was the immediate commander of the Unit members during the attack. At a minimum, Stanišić and Simatović would have had to have made these Unit members available for the Bilje operation.<sup>140</sup>

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<sup>131</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Exh.P00256, pp.10-11. *See* Judgement, para.407 *citing* RFJ-137:Exh.P00246, para.5 (confidential).

<sup>132</sup> Exh.P00500, pp.3, 4, 16 [REDACTED].

<sup>133</sup> Exh.P00258, pp.12, 32 [REDACTED]; [REDACTED]; [REDACTED].

<sup>134</sup> Judgement, fn.729 *citing* Exh.P00264, pp.7, 13.

<sup>135</sup> Exh.P00264, pp.7, 13, 20; [REDACTED]; [REDACTED].

<sup>136</sup> Exh.P00264, p.7.

<sup>137</sup> Exh.P00256, pp.10-11. *Also* Exh.P00258, p.12.

<sup>138</sup> *E.g.* Judgement, paras.114, 150.

<sup>139</sup> Judgement, paras.388, 405.

<sup>140</sup> *See* Judgement, para.424.

68. In the alternative, in the event the Chamber implicitly concluded that the Unit did not participate in the Bilje crimes, the Chamber failed to provide a reasoned opinion for its conclusion.

(b) Stanišić and Simatović trained Unit members who committed crimes in Doboj

69. The Chamber failed to adjudicate whether Stanišić and Simatović contributed to the CCP by training Unit members at Ležimir and Pajzoš who later committed crimes in Doboj.

70. The Chamber found that Serb forces, including Unit members under Božović's command, committed crimes of murder, forcible displacement and persecution in Doboj during and following the Serb takeover of the town in May 1992.<sup>141</sup> Witness evidence that the Chamber relied upon shows that Božović and [REDACTED]<sup>142</sup> led the operations in Doboj and the surrounding villages, which were aimed at expelling Muslim inhabitants.<sup>143</sup>

71. In assessing the contributions of Stanišić and Simatović to these crimes, the Chamber was not satisfied beyond reasonable doubt that Božović and other Unit members were acting under Stanišić's and Simatović's authority at the time.<sup>144</sup> It therefore concluded that Stanišić and Simatović did not contribute to the crimes by: deploying Unit members to Doboj, directing their activities in Doboj, or supporting their activities through training at Mt. Ozren near Doboj.<sup>145</sup>

72. However, the Chamber failed to adjudicate all of the ways that Stanišić and Simatović contributed to the crimes in Doboj. Had it done so, it would have found that Stanišić and Simatović contributed to the crimes (and the CCP) by training Unit members at Ležimir and Pajzoš who then participated in the Doboj crimes.

<sup>141</sup> Judgement, para.428. *Also* Judgement, paras.242, 243, 244, 252.

<sup>142</sup> [REDACTED].

<sup>143</sup> *See* Judgement, para.243, fns.1096-1100 *citing* [REDACTED]. *Also* [REDACTED]; RFJ-165:T.13, 21-24, 26-28 (29-May-2018); Exhs.P01713, p.1; P02023; P02376.

<sup>144</sup> Judgement, paras.430, 431. Although when reaching this conclusion, the Chamber referred to "the training conducted at Mt. Tara" as one of the Unit members' activities in Doboj, a holistic reading of the preceding paragraphs makes clear that this is a typographical error, and the Chamber's finding pertained to the training conducted at Mt. Ozren. *See* Judgement, para.428 (referring to Božović and other Unit members under his command establishing a training camp "at Mt. Ozren near Doboj").

<sup>145</sup> Judgement, paras.428-431. Although the Chamber referred to the Ozren training camp as being established in "April 1994", a holistic reading of the subsequent text and paragraph makes clear that this is a typographical error, and the camp was established in April 1992. *See* Judgement, paras.428 (referring to the attack on Doboj on 3 May 1992), 429 (referring to the close proximity to Božović and the group's time in Ležimir and Pajzoš).

73. The Chamber found that the Ležimir and Pajzoš training camps were under Stanišić's and Simatović's authority and control until at least March or April 1992, and that the training conducted there was done at Stanišić's and Simatović's direction and with their authorisation, as well as their financial and logistical support.<sup>146</sup> The Chamber accepted that Božović and the Unit members under his command had come to the Doboje area from Ležimir and Pajzoš in April 1992,<sup>147</sup> and the evidence shows that both Božović and [REDACTED], as well as other Unit members who participated in the Doboje attack,<sup>148</sup> were at the Ležimir and Pajzoš training camps.<sup>149</sup>

74. In the alternative, if the Appeals Chamber considers that the Chamber implicitly adjudicated all ways in which Stanišić and Simatović supported Unit members who committed crimes in Doboje through the use of the word "including",<sup>150</sup> the Chamber failed to provide a reasoned opinion why their training at Ležimir and Pajzoš did not constitute a contribution to the CCP.

(c) Stanišić and Simatović deployed forces into Sanski Most

75. The Chamber failed to adjudicate whether Stanišić and Simatović contributed to the CCP by deploying Serb forces into Sanski Most in 1995.<sup>151</sup>

76. The Prosecution argued at trial that in September 1995 Stanišić and Simatović and other JCE members deployed Serb forces, including both the Unit (JATD) and SDG, into the ARK to drive out the remaining non-Serbs.<sup>152</sup>

<sup>146</sup> Judgement, paras.406-407, 409.

<sup>147</sup> Judgement, paras.428, 429 (referring to "Božović and the other individuals from Pajzoš" as well as "the close proximity to their time in Ležimir and Pajzoš"). Also Judgement, para.431 (referring to "Božović and the group that came with him from Pajzoš").

<sup>148</sup> The record demonstrates that other Unit members whom the Chamber acknowledged as present in Doboje had also been at Ležimir. See Judgement, para.429, fn.1709 (naming [REDACTED], Banjac, Popović, [REDACTED], and Dimić as Unit members); [REDACTED]: [REDACTED]; Banjac: Exh.P00553, pp.16-17; Popović: Exh.P00500, p.16; [REDACTED]: [REDACTED]; [REDACTED]; Dimić: Exh.P02706, p.6. See Judgement, para.407.

<sup>149</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Exh.P00260, pp.23, 24, 30, 32; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>150</sup> Judgement, para.431: "[T]here is reasonable doubt as to whether Božović and the group that came with him from Pajzoš were deployed by the Accused to Doboje, and whether the Accused directed and supported their activities there, including the training conducted at Mt. [Ozren]." (emphasis added).

<sup>151</sup> The aim of the ARK Operation was to maintain control over previously cleansed territory and drive out remaining non-Serbs, thereby furthering the CCP: *above* para.35.

<sup>152</sup> Indictment, para.15(b) ("directed and organised the formation of special units of the Republic of Serbia DB and other Serb Forces which were involved in the commission in crimes in Croatia and BiH during the

77. In the section concerning “Contribution through the Serbian Volunteer Guard” (SDG), the Chamber acknowledged evidence that Stanišić sent 300-400 men into the 1995 ARK Operation.<sup>153</sup> However, the Chamber found this evidence insufficient to show that these men were SDG members, leaving open the possibility that the men deployed by Stanišić and Simatović were not “related to Arkan” or “were separate from Arkan’s group.”<sup>154</sup> Once it determined that the 300-400 men were not proven to be SDG, it did not consider this contribution any further. The Chamber never returned to this allegation in any other section of the Judgement.<sup>155</sup>

78. The Prosecution argued in its Final Trial Brief that the 300-400 men Stanišić and Simatović deployed were SDG members.<sup>156</sup> However, the Prosecution’s case did not turn on their specific affiliation, which was contested at trial.<sup>157</sup> The evidence, which the Chamber accepted, shows that, regardless of their affiliation, Stanišić deployed a large number of men to this operation. While the Chamber was not satisfied that they were SDG members, it should still have assessed whether the deployment of 300-400 men to this operation was a contribution to the CCP, even on its own erroneously narrow standard, since it included deployment to Sanski Most, a charged municipality.<sup>158</sup>

79. Had the Chamber adjudicated this contribution, it would have found that deploying these forces contributed to the crimes, and ultimately to the CCP.<sup>159</sup>

80. Alternatively, should the Appeals Chamber find that the Chamber implicitly adjudicated this contribution, it failed to provide a reasoned opinion why this deployment did not constitute a contribution to the CCP.

3. Sub-ground 1(A)(iii): The Chamber erred in excluding from adjudication Stanišić’s and Simatović’s contributions to forcible displacement crimes in Sanski Most in 1995

81. The Chamber erred in law when it declined to adjudicate whether Stanišić and Simatović contributed to the CCP by financing SDG members who were involved in forcible

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Indictment period.”). Prosecution-PTB, para.89; Prosecution-FTB, para.654; Prosecution Closing Arguments, T.89, 92 (12-Apr-2021). With regard to the involvement of the JATD in the ARK Operation: *see above* para.38.

<sup>153</sup> Judgement, para.451.

<sup>154</sup> Judgement, para.451.

<sup>155</sup> Judgement, para.451(referring to “the men sent by Stanišić”).

<sup>156</sup> Prosecution-FTB, paras.659-664; Prosecution Closing Arguments, T.90 (12-Apr-2021).

<sup>157</sup> Prosecution-FTB, paras.654-656.

<sup>158</sup> Judgement, para.451.

displacement crimes in Sanski Most in 1995. It erroneously determined—based on an incorrect reading of the Prosecution’s Final Trial Brief—that the Prosecution was not pursuing those charges.<sup>160</sup>

82. The Chamber made that determination even though it acknowledged that the language in the Indictment was broad and could encompass underlying acts of forcible displacement in Sanski Most in 1995.<sup>161</sup> In a different part of the Judgement it even mentioned the allegations in the Indictment that “murders, along with other crimes and acts of violence associated with the attack and takeover of Sanski Most municipality, resulted in the forcible displacement of the non-Serb population from the area [...]”.<sup>162</sup>

83. Forcible displacement in Sanski Most in 1995 formed part of the Prosecution’s case throughout the retrial.

84. In its Pre-Trial Brief, the Prosecution argued this charge under the heading “From September-December 1995, Arkan’s SDG and other Serb Forces murdered and forcibly displaced non-Serbs”,<sup>163</sup> stating that, in September 1995:

In their final push to permanently rid Sanski Most of non-Serbs, ARKAN’s SDG and other Serb Forces unleashed a new crimewave, killing, beating, raping, physically expelling, and detaining non-Serbs in inhumane conditions, subjecting them to forced labour and looting, and calling them ethnic slurs. *Through these crimes ARKAN and the SDG forcibly displaced non-Serbs to other locations [...] where they continued to suffer terrible crimes.*<sup>164</sup>

85. Moreover, the Chamber concluded—factually—that crimes and acts of violence committed by Serb forces, including Arkan’s SDG, in Sanski Most in September 1995 forced non-Serb civilians to leave the area.<sup>165</sup> It found that:

- Arkan and his SDG—who had forced the non-Serb population of SAO-SBWS to flee by killing, arbitrarily arresting and detaining them, and burning Catholic churches, amongst other crimes, in the fall of 1991;<sup>166</sup> and forced non-Serbs to flee Bijeljina and

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<sup>159</sup> Also above paras.34-45; below paras.81-94.

<sup>160</sup> Judgement, para.453.

<sup>161</sup> Judgement, fn.1827 referring to Indictment, paras.64-65.

<sup>162</sup> Judgement, para.260 citing Indictment, paras.64-66; Prosecution-PTB, para.181; Prosecution-FTB, para.863.

<sup>163</sup> Prosecution-PTB, heading above para.181.

<sup>164</sup> Prosecution-PTB, para.181 (emphasis added) (internal citations omitted) cited at Judgement, paras.260-261.

<sup>165</sup> Judgement, para.278.

<sup>166</sup> Judgement, para.169.

Zvornik in 1992 by the same criminal means<sup>167</sup>—arrived in Sanski Most in September 1995.<sup>168</sup>

- The SDG continued to commit crimes against non-Serbs in Sanski Most. They set up checkpoints, arbitrarily arrested non-Serb men remaining in the Sanski Most area and detained them in the SDG base in the Hotel Sanus where they were beaten and kept in inhumane conditions without food or water for several days and at least two detainees died and their bodies were left in a room where men were detained.<sup>169</sup>
- On 20-21 September 1995, SDG members rounded up non-Serbs in the municipality, as well as detainees from the Hotel Sanus, drove them to killing sites at Trnova and Sasina, and shot them *en masse*.<sup>170</sup> SDG members also raped a woman on board a bus destined for the killing site at Sasina, where the woman was also killed, all of which forced the non-Serb population to flee.<sup>171</sup>

(a) The Prosecution continued to pursue charges of forcible displacement in Sanski Most in 1995 in its final submissions

86. Contrary to the Chamber’s determination, the Prosecution continued to pursue the charges of forcible displacement in Sanski Most in 1995 in its final submissions. Notably:

- In the Prosecution’s Final Trial Brief, in the section on how JCE members continued to pursue the CCP through the 1995 ARK Operation, the Prosecution explained that Serb forces, including the SDG, were deployed to the ARK to defend previously cleansed territory and drive out the remaining non-Serbs: “ARKAN’s SDG, in particular, advanced the CCP by detaining, raping, persecuting, and murdering the remaining Muslims in Sanski Most.”<sup>172</sup>
- In the charged crime base section of the Final Trial Brief on events in Sanski Most, the Prosecution reiterated that “in September-October 1995, ARKAN and his SDG deployed to Sanski Most to defend previously cleansed territory and purge the few remaining non-Serbs”.<sup>173</sup> The Chamber—in the section of the Judgement on the

<sup>167</sup> Judgement, paras.181, 199-201.

<sup>168</sup> Judgement, para.271.

<sup>169</sup> Judgement, para.271.

<sup>170</sup> Judgement, paras.271-276.

<sup>171</sup> Judgement, paras.273-274, 277-278.

<sup>172</sup> Prosecution-FTB, para.654.

<sup>173</sup> Prosecution-FTB, para.863. *Also* Prosecution-FTB, para.654.

events in Sanski Most—referred to this paragraph of the Prosecution’s Final Trial Brief.<sup>174</sup>

- Also, in the charged crime base section of the Final Trial Brief on events in Sanski Most, the Prosecution highlighted the significant reduction in the number of non-Serbs in Sanski Most between February 1995 and 1997.<sup>175</sup> This further reinforced that the Prosecution continued to pursue charges of forcible displacement crimes during the 1995 operations.

87. Moreover, during closing arguments, the Prosecution emphasised that the crimes committed in Sanski Most were committed with the aim of ensuring the ethnic cleansing gains that had been previously achieved in the region, in furtherance of the CCP.<sup>176</sup>

(b) Stanišić and Simatović contributed to the CCP by financing the SDG who committed forcible displacement crimes in Sanski Most in 1995

88. Had the Chamber adjudicated this contribution, it would have found that Stanišić and Simatović contributed to the CCP by financing the SDG members who participated in the 1995 Sanski Most operations.

89. The Chamber acknowledged evidence that the SerbianDB paid some SDG members who may have committed forcible displacement crimes in Sanski Most in 1995.<sup>177</sup> In fact, the record shows that [REDACTED] SDG members committed crimes of detention, torture and killing<sup>178</sup>—all crimes that the Chamber found led the non-Serbs in Sanski Most to flee.<sup>179</sup> The crimes committed by [REDACTED] SDG members were thus part of the “force” of forcible displacement crimes in Sanski Most in 1995.

90. In addition, applying the correct standard for assessing contributions to the CCP,<sup>180</sup> Stanišić and Simatović contributed to the CCP by financing the SDG, whose members committed forcible displacement crimes, regardless of whether it can be shown that specific SDG perpetrators of displacement crimes in Sanski Most in 1995 were financed by the SerbianDB.

<sup>174</sup> See Judgement, para.261.

<sup>175</sup> Prosecution-FTB, para.881.

<sup>176</sup> Prosecution Closing Arguments, T.89, 92 (12-Apr-2021).

<sup>177</sup> Judgement, para.453.

<sup>178</sup> See [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].





4. Sub-ground 1(A)(iv): The Chamber erred in fact in failing to find Stanišić and Simatović contributed to the CCP in additional ways

95. The Chamber erred in fact when it failed to find that Stanišić and Simatović contributed to the CCP in numerous ways beyond training and deployment in relation to Bosanski Šamac.

(a) Stanišić and Simatović contributed to the CCP by deploying Unit members who committed crimes in Western Srem

96. No reasonable trial chamber could have failed to find that Stanišić and Simatović contributed to the CCP by deploying Unit members for the ethnic cleansing operations in Western Srem.<sup>189</sup>

97. The Chamber found that Stanišić and Simatović had authority over the Unit and determined its use and deployment between August/September 1991 and mid-April 1992.<sup>190</sup> The Chamber acknowledged it had received evidence that during this time, in October 1991, Unit members participated in operations in Western Srem.<sup>191</sup>

98. However, the Chamber found no contribution through deployment of Unit members to Western Srem because it erroneously concluded that the Prosecution had not proven that the Unit perpetrated crimes charged in the Indictment.<sup>192</sup> Based on the Chamber's own findings and the evidence on the record, no reasonable trial chamber could have reached this conclusion.

99. The Western Srem operations were offensive ethnic cleansing operations. The Chamber found that the JNA attacked Bapska, Šarengrad and Lovas in Western Srem in early October 1991 and expelled, killed, and arbitrarily arrested and detained non-Serbs in a pattern of attacks trying "to displace as many Croats as possible".<sup>193</sup> These attacks specifically targeted non-Serbs and forced the non-Serb population of Western Srem to leave the area.<sup>194</sup>

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<sup>189</sup> Judgement, paras.162, 168.

<sup>190</sup> Judgement, paras.388, 405.

<sup>191</sup> Judgement, para.162.

<sup>192</sup> Judgement, para.388. *Also above* para.49.

<sup>193</sup> Judgement, paras.162, 168.

<sup>194</sup> Judgement, para.168.

100. Given the evidence on the record of the Unit's involvement in these operations together with the JNA, and the large scale of the crimes,<sup>195</sup> no reasonable trial chamber could have found that Unit members did not commit crimes in Western Srem. The evidence shows that:

- The objective, and outcome, of the operations in Western Srem was criminal: to displace the non-Serb population;<sup>196</sup>
- The Unit assisted the JNA in the Western Srem operation;<sup>197</sup>
- Unit members were involved in "capturing" Bapska and Šarengrad<sup>198</sup> and took part in [REDACTED];<sup>199</sup>
- [REDACTED];<sup>200</sup> and
- [REDACTED].<sup>201</sup>

101. RFJ-137's evidence, referred to by the Chamber, does not undermine the conclusion that Unit members committed crimes in Western Srem. RFJ-137 testified that he and other Unit members were deployed into Bapska, Ilok or Šarengrad where they sought to push Croat forces from their stronghold in a local church, after having been assured that no civilians remained.<sup>202</sup> In light of the large scale of crimes during the Western Srem operation and the significance of the Unit's participation therein, events in a single location do not undermine the Unit's involvement in crimes in other locations.

102. Based on the above, no reasonable trial chamber could have found that Stanišić and Simatović did not contribute to the CCP by deploying Unit members to Western Srem, where they committed crimes and forced the non-Serb population to flee.

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<sup>195</sup> Judgement, paras.162-163, 167-168. *Also* Judgement, para.589.

<sup>196</sup> *See* Judgement, paras.162, 168 and evidence cited therein.

<sup>197</sup> [REDACTED]; [REDACTED].

<sup>198</sup> Exh.P00261, p.5.

<sup>199</sup> [REDACTED]; [REDACTED]. *Also* Judgement, para.405, fns.47, 1709 ([REDACTED]).

<sup>200</sup> [REDACTED]; [REDACTED].

<sup>201</sup> [REDACTED].

<sup>202</sup> Judgement, para.162, fn.779 *citing* RFJ-137:Exh.P00245, paras.8, 68-70 (confidential).

(b) Stanišić and Simatović contributed to the CCP by deploying Božović and others who committed crimes in Doboj

103. No reasonable trial chamber could have concluded that there was reasonable doubt as to whether Stanišić and Simatović contributed to the CCP by deploying Božović and the group who came with him from Pajzoš to Doboj, based on the Chamber’s other findings and the trial record as a whole.

104. The Chamber found that Stanišić and Simatović had authority over the Unit and determined its use and deployment until at least mid-April 1992.<sup>203</sup> During that time, the Unit’s deputy commander Božović<sup>204</sup> and a number of Unit members under his command came from Pajzoš—a camp under Stanišić’s and Simatović’s authority until at least March-April 1992<sup>205</sup>—and established a training camp at Mt. Ozren near Doboj in April 1992,<sup>206</sup> where they trained several hundred local recruits from the area.<sup>207</sup> On 3 May 1992, forces trained at Mt. Ozren and under Božović’s command, along with other Serb forces, attacked Doboj and took over the town.<sup>208</sup> As a result of the takeover and ensuing criminality, thousands of non-Serbs left the town, leaving it “completely cleansed”,<sup>209</sup> thus furthering the CCP.

105. Even though it accepted that there were “strong indicia that Božović and the other individuals from Pajzoš remained members of the Unit” during the attack on Doboj,<sup>210</sup> the Chamber was not satisfied beyond reasonable doubt that Božović acted as a member of the Unit under the authority of Stanišić and Simatović during the Doboj operations.<sup>211</sup> In reaching this conclusion, the Chamber failed to take into account other relevant evidence. The evidence referred to by the Chamber in this section, as well as the evidence it failed to discuss, leave no doubt that Stanišić and Simatović did have authority over Božović and the group that came with him during the Doboj operations.

106. The Chamber considered Božović’s membership in the JATD and his introduction to Milošević as a “veteran” Unit member at the Unit’s anniversary ceremony at the Kostić

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<sup>203</sup> Judgement, para.388.

<sup>204</sup> Judgement, para.405.

<sup>205</sup> Judgement, paras.409, 429, 431.

<sup>206</sup> *Above* fn.145.

<sup>207</sup> Judgement, para.428.

<sup>208</sup> Judgement, para.242.

<sup>209</sup> Judgement, para.242. *Also* Judgement, para.428.

<sup>210</sup> Judgement, para.429.

<sup>211</sup> Judgement, para.430.

Centre as “strong indicia” that Božović and the others remained members of the Unit during the Doboj operations.<sup>212</sup> The Chamber overlooked that:

- Three other Unit members involved in the Doboj operations—Subotić, Đurica Banjac, and Nikola Lončar—were also introduced to Milošević as “veteran Unit members” during the same ceremony;<sup>213</sup>
- Serbian court records from July 1992 referred to Božović and some of the Unit members the Chamber identified as being in a unit with Božović in Doboj<sup>214</sup>—namely Milenko Popović, Lončar and Nedeljko Kušić—as employees of the SMUP;<sup>215</sup> and
- Documents from the personnel files of some of these Unit members—Subotić, Banjac and Popović—demonstrate that they remained in the Unit after it was renamed the JATD in August 1993.<sup>216</sup>

107. The evidence concerning the Ozren training camp, further supports the conclusion that Stanišić and Simatović retained authority over Božović and the others in his group during this period. The Chamber pointed to Simatović’s mention of the Ozren training camp in his speech during the Kula ceremony at the Kostić Centre as one of the “strong indicia” that Božović and the group from Pajzoš who founded the Ozren camp had remained members of the Unit.<sup>217</sup> The Chamber ignored evidence showing that after the takeover of Doboj, the Unit members established another training camp in an area of Doboj town called Vila.<sup>218</sup> Like the Ozren camp, Simatović recognised the Doboj/Vila camp as having been formed by the SerbianDB.<sup>219</sup> The Doboj/Vila camp, along with the camps in Ozren, Pajzoš and Ležimir, were all marked on a map in the Kostić Centre with the Unit’s wolf head symbol,<sup>220</sup> denoting them as Unit camps.

<sup>212</sup> Judgement, para.429, fn.1710.

<sup>213</sup> Davor Subotić, Đurica Banjac, Nikola Lončar: Exh.P00256 (00:09:06-00:10:40; 00:11:23-00:11:26; 00:11:16-00:11:20; 00:44:13-00:44:20), pp.4-6-8, 27.

<sup>214</sup> Judgement, fn.1709.

<sup>215</sup> Exh.P00500, pp.1-2.

<sup>216</sup> Davor Subotić: [REDACTED]; P00256 (00:09:06-00:10:40), pp.4-6; Đurica Banjac: Exhs.P00553, p.26; P00256 (00:11:23-00:11:26; 00:44:13-00:44:20), pp.4, 8, 27; Milenko Popović: Exh.P00500, p.19.

<sup>217</sup> Judgement, para.429.

<sup>218</sup> [REDACTED]; [REDACTED]; RFJ-165:T.17 (29-May-2018); [REDACTED]; [REDACTED]; E.Hadžović:Exh.P02011, p.78 (T.2297); E.Hadžović:T.13-15, 20 (28-Mar-2018).

<sup>219</sup> Exh.P00256(00:15:48-00:16:18), p.11; [REDACTED]. Also Exh.P00537 (00:00:27-00:00:31), p.1; [REDACTED]; RFJ-165:T.17 (29-May-2018); [REDACTED]; [REDACTED].

<sup>220</sup> Exhs.P00256 (00:20:43-00:20:49), p.13; P00537 (00:00:27-00:00:31), p.1; [REDACTED].

108. The Chamber also relied on personnel files to find that, “at least in April or May 1992, Božović was in a unit” with Unit members Subotić, Popović, and Milan Dimić, amongst others.<sup>221</sup> The Chamber, however, ignored that documents in these personnel files also show that they participated in the Mt. Ozren training and Doboj operations as part of the Unit:

- [REDACTED];<sup>222</sup>
- In his handwritten biography from February 1992, Popović wrote that he had been in “this unit” since July 1991,<sup>223</sup> and later detailed the activities in which he had participated with that unit between 1991 and 1993, including training around 2,000 men in the area of Ozren, Doboj and Teslić, as well as in operations in Doboj;<sup>224</sup> and
- Milan Dimić’s file includes reports and a funeral announcement stating that he was killed on 13 July 1992 in Doboj as a member of the Special Purpose Unit.<sup>225</sup> After his death during the Doboj operation, the SerbianDB paid his salary and a daily allowance to Dimić’s father, and Dimić received a posthumous award from the SerbianDB in May 1996.<sup>226</sup> Since the Doboj operation is the only operation in which he participated as a Unit member, according to his personnel file, all compensation provided posthumously by the SerbianDB related to Doboj.

109. Moreover, the Chamber ignored evidence which undermines the Chamber’s alternative inference—that Unit members were under RS-MUP control during the Doboj operations.<sup>227</sup> [REDACTED] on whom the Chamber relied extensively when considering the crimes in Doboj<sup>228</sup> testified that [REDACTED].<sup>229</sup>

110. Other evidence—highlighted by the Prosecution in its Final Trial Brief and in closing arguments, but not addressed anywhere in the Judgement—further demonstrates the unreasonableness of the Chamber’s conclusion regarding Stanišić’s and Simatović’s authority over Božović and those under his command in Doboj. For example, a form completed as an

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<sup>221</sup> Judgement, fn.1709.

<sup>222</sup> [REDACTED].

<sup>223</sup> Exh.P00500, p.4.

<sup>224</sup> Exh.P00500, p.16.

<sup>225</sup> Exh.P02706, pp.3, 9.

<sup>226</sup> Exh.P02706, pp.1, 5.

<sup>227</sup> Judgement, para.431.

<sup>228</sup> *E.g.* Judgement, paras.240-248, 250 *citing* [REDACTED].

<sup>229</sup> [REDACTED].

application for financial aid for medical purposes<sup>230</sup> demonstrates Simatović's and the SMUP's positions of authority over the Ozren camp during the time-frame of the attack on Doboј by Ozren trainees. Dated 17 May 1992, it shows that Duško Drobić joined the "MUP Serbia" unit under "Frenki" and "Rajo Božović" on 12 April 1992, and served as an instructor at Ozren, where he was wounded on 7 May 1992.<sup>231</sup>

111. On the basis of the above, no reasonable trial chamber could have failed to find Božović and the Unit members that came with him from Pajzoš in April 1992 remained under Stanišić and Simatović's authority during the Doboј operation in which they committed crimes. Stanišić and Simatović therefore deployed Unit members, including Božović, to the Doboј operation and thus contributed to the CCP.

112. Moreover, had the Chamber correctly found that Božović and the Unit members who came with him to Ozren in April 1992 remained under the authority of Stanišić and Simatović while in the Doboј area, the Chamber would have also found that the training that group conducted at Ozren also took place under Stanišić's and Simatović's authority. The Chamber found that Božović and a number of original Unit members under his command established a training camp at Mt. Ozren near Doboј, where they trained several hundred recruits from the area who acted under their command.<sup>232</sup> The evidence shows persons trained at Mt. Ozren,<sup>233</sup> in particular Predrag Kujundžić and Slobodan Karagić perpetrated crimes in Doboј.<sup>234</sup> On this basis, the Chamber should have concluded that Stanišić and Simatović contributed to the CCP by training at Ozren Doboј locals who acted under their authority, and subsequently committed crimes during the Doboј operation.

(c) Stanišić and Simatović contributed to the CCP by financing the SDG who committed murders in Sanski Most in 1995

113. No reasonable trial chamber could have failed to find that Stanišić and Simatović contributed to the CCP by financing the SDG who committed murders in Sanski Most in 1995. The Chamber found that the SDG committed crimes, including murders, in Sanski Most in 1995.<sup>235</sup> It also acknowledged that some SDG members were paid by the SerbianDB, but

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<sup>230</sup> Exh.P01168.

<sup>231</sup> Exh.P01168, p.3.

<sup>232</sup> Judgement, paras.428, 429.

<sup>233</sup> [REDACTED]; Exh.P02367, p.4; [REDACTED].

<sup>234</sup> Judgement, paras.243, 248.

<sup>235</sup> Judgement, paras.275-278, 299-302.

found that the evidence was insufficient to establish that those specific SDG members participated in the charged killing incidents in Sanski Most.<sup>236</sup>

114. However, as discussed above,<sup>237</sup> the evidence shows that the SerbianDB paid SDG members throughout 1995,<sup>238</sup> and that SerbianDB playlists were grouped by unit<sup>239</sup> and geographically.<sup>240</sup> This means that everyone on the same list as those SDG members paid by the SerbianDB in Sanski Most in 1995, would also have been SDG participating in the operation in Sanski Most in 1995. [REDACTED] evidence further corroborates that Stanišić and Simatović paid the SDG unit during its deployment to Sanski Most.<sup>241</sup>

115. Moreover, given the nature of the SDG's operation in Sanski Most—which entailed systematically arresting and detaining non-Serbs, depriving them of food and water for days, beating them, and transporting them to different locations around the municipality to murder them *en masse*<sup>242</sup>—all SDG members in the operation would have been involved.

116. Accordingly, no reasonable trial chamber could have failed to find that the SerbianDB paid the SDG members who committed the murders in Sanski Most in 1995 and thus contributed to the CCP.

(d) Stanišić and Simatović contributed to the CCP in additional ways

117. If the Appeals Chamber determines that the Chamber did adjudicate the contributions described under sub-ground 1(A)(ii) and found them not proven, it erred in fact. For the reasons set out above, no reasonable trial chamber could have failed to find that Stanišić and Simatović furthered the CCP through those contributions.<sup>243</sup>

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<sup>236</sup> Judgement, para.453.

<sup>237</sup> Above para.91.

<sup>238</sup> See [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; P00828, pp.21-27, 31-32, 36, 70 (ENG); P00829, pp.47-48, 55-58, 60, 62-63, 67-69 (ENG); P01155, pp.30-33, 35-36, 38, 41-42, 50, 52-53 (ENG). Also [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>239</sup> For example, [REDACTED]. See [REDACTED] and *e.g.* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. Also [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>240</sup> D.Krsmanović:Exh.1D00386, p.6 (*per diem* lists were grouped geographically according to where they were operating).

<sup>241</sup> See [REDACTED]; [REDACTED].

<sup>242</sup> Judgement, paras.271-274.

<sup>243</sup> Above paras.60-80.

## 5. Remedy

118. Had the Trial Chamber not committed the errors described above, it would have found that Stanišić and Simatović contributed to the CCP in numerous ways in addition to its finding that they contributed to the CCP in relation to Bosanski Šamac.<sup>244</sup>

119. The Appeals Chamber should correct these errors and find that Stanišić and Simatović also significantly contributed to the CCP through:

- training Serb forces who participated in ethnic cleansing operations in Brčko;<sup>245</sup>
- training, financing, and commanding Serb forces who participated in the 1993 Podrinje ethnic cleansing operations in eastern BiH;<sup>246</sup>
- deploying the JATD to and commanding them during the 1994 Operation Pauk;<sup>247</sup>
- deploying the JATD to the 1995 Treskavica/Trnovo and ARK Operations;<sup>248</sup>
- financing the SDG during the 1995 ARK Operation, including in Sanski Most;<sup>249</sup>
- supporting the SDG during the 1995 Treskavica/Trnovo Operations;<sup>250</sup>
- financing the SDG during the 1994 Operation Pauk;<sup>251</sup>
- supporting the Scorpions in the 1994 Operation Pauk;<sup>252</sup>
- deploying Unit members who committed crimes in Western Srem;<sup>253</sup>
- communicating with Karadžić to set up Serb structures in BiH;<sup>254</sup>
- gathering intelligence through the SNB and other groups;<sup>255</sup>

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<sup>244</sup> Judgement, paras.419, 424.

<sup>245</sup> *Above* paras.22-26.

<sup>246</sup> *Above* paras.27-33.

<sup>247</sup> *Above* paras.37-39.

<sup>248</sup> *Above* paras.37-39.

<sup>249</sup> *Above* paras.43, 81-94, 113-115.

<sup>250</sup> *Above* paras.44-45.

<sup>251</sup> *Above* paras.44-45.

<sup>252</sup> *Above* paras.46-48.

<sup>253</sup> *Above* paras.49, 96-102.

<sup>254</sup> *Above* paras.50-51.

<sup>255</sup> *Above* paras.52-56.



- deploying Unit members who committed crimes in Bilje;<sup>256</sup>
- training Unit members who committed crimes in Doboje;<sup>257</sup>
- deploying hundreds of men to Sanski Most; and<sup>258</sup>
- deploying Božović and other Unit members to Doboje.<sup>259</sup>

120. The Appeals Chamber should then assess Stanišić's and Simatović's shared intent based on all relevant factors, including these additional contributions to the CCP, and find that they shared the intent for the CCP.

121. The Appeals Chamber should therefore find Stanišić and Simatović guilty as members of the JCE for the proven crimes, all of which were committed in furtherance of the CCP.

122. In SAO-Krajina the Chamber found the following crimes:

- In Kijevo, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: units of the JNA 9<sup>th</sup> Corps, SAO-Krajina police and TO, and a Golubić-trained Unit member;<sup>260</sup>
- In Vrlika, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: units of the JNA 9<sup>th</sup> Corps, the SAO-Krajina police and volunteer and paramilitary units;<sup>261</sup>
- In Drniš, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: units of the JNA 9<sup>th</sup> Corps and SAO-Krajina police;<sup>262</sup>
- In Hrvatska Kostajnica, murder, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: units of the JNA, SAO-Krajina police and Territorial Defence (TO);<sup>263</sup>

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<sup>256</sup> Above paras.61-68, 117.

<sup>257</sup> Above paras.69-74, 117.

<sup>258</sup> Above paras.75-80, 117.

<sup>259</sup> Above paras.103-112.

<sup>260</sup> Judgement, paras.31-32, 102, 309-318, 322-325.

<sup>261</sup> Judgement, paras.33, 102, 309-318, 322-325.

<sup>262</sup> Judgement, paras.33, 102, 309-318, 322-325.

- In Saborsko, murder, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: units of the JNA, SAO-Krajina police, SAO-Krajina TO (including the Korenica TO commander and the Plaški TO brigade), the Plaški State Security Service and Serb paramilitary forces;<sup>264</sup>
- In Škabrnja, murder, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: units of the JNA 9<sup>th</sup> Corps, the Benkovac TO subordinated to the JNA, the SAO-Krajina police (Golubić-trained members of the Benkovac Public Security Station special police unit) and Serb volunteers referred to as “Chetniks”;<sup>265</sup> and
- In Bruška and Marinovići, murder, deportation and other inhumane acts (forcible transfer) and persecution committed by Serb forces, including: members of the SAO-Krajina police.<sup>266</sup>

123. In SAO-SBWS the Chamber found the following crimes were committed:

- In Dalj, Erdut and the surrounding area in Eastern Slavonia, murder, deportation and other inhumane acts (forcible transfer) and persecution committed by Serb forces including the: JNA, SAO-SBWS TO, SAO-SBWS police, Arkan and his SDG, and the Serbian National Security (SNB);<sup>267</sup>
- In Vukovar and the surrounding area in Eastern Slavonia, deportation and other inhumane acts (forcible transfer) and persecution committed by Serb forces including the: JNA, SAO-SBWS TO, SAO-SBWS police and SDG;<sup>268</sup>
- In Baranja, deportation and other inhumane acts (forcible transfer) and persecution committed by Serb forces including the: Unit, JNA, SAO-SBWS police and SAO-SBWS TO;<sup>269</sup> and

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<sup>263</sup> Judgement, paras.39-47, 102, 299-302, 309-318, 322-325.

<sup>264</sup> Judgement, paras.52-66, 102, 299-302, 309-318, 322-325.

<sup>265</sup> Judgement, paras.75-83, 102, 299-302, 309-318, 322-325.

<sup>266</sup> Judgement, paras.89-95, 102, 299-302, 309-318, 322-325.

<sup>267</sup> Judgement, paras.111-116, 119-136, 169, 299-302, 309-318, 322-325.

<sup>268</sup> Judgement, paras.142-146, 169, 309-318, 322-325.

<sup>269</sup> Judgement, paras.150-153, 156, 169, 309-318, 322-325. *Above* paras.61-68, 117.

- In Western Srem, deportation and other inhumane acts (forcible transfer) and persecution committed by Serb forces including the: Unit, JNA, SDG, SAO-SBWS TO, SAO-SBWS police, and Serbian Radical Party (SRS) volunteers.<sup>270</sup>

124. In the RSK the Chamber found the following crimes were committed:

- Deportation and other inhumane acts (forcible transfer) and persecution committed by Serb forces, including: units of the RSK police, JNA and the SDG.<sup>271</sup>

125. In BiH the Chamber found the following crimes were committed:

- In Bijeljina, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: Arkan's SDG, the White Eagles, Serbian National Guard and local police;<sup>272</sup>
- In Zvornik, murder, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: Arkan's SDG, volunteers under Mauzer, Šešelj's men, the JNA, forces under Marko Pavlović and the Yellow Wasps;<sup>273</sup>
- In Bosanski Šamac, murder, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: forces—including Unit members<sup>274</sup>—who arrived in Batkuša on 11 April 1992, Serb police, TO and the JNA;<sup>275</sup>
- In Doboje, murder, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: Predrag Kujundžić's unit, Slobodan Karagić's unit, Serb paramilitaries, the JNA, forces under Milovan Stanković's command, the Serb police and the forces under Radojica Božović's command, including Unit members<sup>276</sup> as well as those trained at Mt. Ozren;<sup>277</sup>

<sup>270</sup> Judgement, paras.160-162, 164-166, 168-169, 309-318, 322-325. *Above* paras.96-102.

<sup>271</sup> See Judgement, paras.98-101, 102, 299-302, 309-318, 322-325.

<sup>272</sup> Judgement paras.181, 278, 309-318, 322-325.

<sup>273</sup> Judgement, paras.199-201, 278, 299-302, 309-318, 322-325.

<sup>274</sup> Judgement, para.417.

<sup>275</sup> Judgement, paras.215, 225, 229, 233-234, 278, 299-302, 309-318, 322-325.

<sup>276</sup> Judgement, para.428. *Also* Judgement, fn.1709.

<sup>277</sup> Judgement, paras.248, 252-253, 278, 299-302, 309-318, 322-325.

- In Trnovo, murder and persecution committed by the Scorpions;<sup>278</sup> and
- In Sanski Most, murder, deportation and other inhumane acts (forcible transfer) and persecution, committed by Serb forces, including: the JNA, the TO, the VRS, paramilitary units, and the SDG.<sup>279</sup>

126. These crimes can be attributed to Stanišić and Simatović, because they were committed by forces controlled by them or other JCE members, or acted together with forces controlled by JCE members in the commission of the crimes:<sup>280</sup>

- Crimes committed by Unit members can be attributed to Stanišić and Simatović. The Chamber found that Stanišić and Simatović had authority over the Unit and determined its use and deployment between August/September 1991 and mid-April 1992;<sup>281</sup>
- Crimes committed by the JNA and units under its command, including TO units and SRS volunteers, can be attributed to Milošević. The Chamber found that Milošević was a JCE member.<sup>282</sup> Evidence on the record shows that Milošević held *de facto* control over the JNA;<sup>283</sup>
- Crimes committed by the SAO-Krajina police and TO can be attributed to Milan Martić and/or Milan Babić. The Chamber found that Babić and Martić were JCE members<sup>284</sup> and that they were in control of the SAO-Krajina TO as Commander and Deputy Commander, respectively.<sup>285</sup> The Chamber also found that Martić was in control of the SAO-Krajina police,<sup>286</sup> and that, beginning in August 1991, Babić held *de jure* command over the SAO-Krajina special purpose police units.<sup>287</sup> Crimes

<sup>278</sup> Judgement, paras.259, 278, 299-302, 322-325.

<sup>279</sup> Judgement, paras.265-267, 275-278, 299-302, 309-318, 322-325.

<sup>280</sup> See Martić AJ, paras.187, 188, 195.

<sup>281</sup> Judgment, paras.388, 405.

<sup>282</sup> Judgement, para.380.

<sup>283</sup> M.Babić:Exh.P01246, pp.275-277 (T.13130-13132).

<sup>284</sup> Judgement, para.380.

<sup>285</sup> Judgement, para.481.

<sup>286</sup> Judgement, paras.481-482. *Also* Judgement, para.482, fn.1932 *citing* R.Makšić:Exh.P00025, para.66 (the special purpose units were directly subordinated to Martić). *Below* fn.416.

<sup>287</sup> Judgement, para.482.

committed by the Plaški State Security Service can also be attributed to Martić as SAO-Krajina Minister of Interior;<sup>288</sup>

- Crimes committed by the JNA 9<sup>th</sup> Corps can be attributed to Ratko Mladić. The Chamber found that Mladić was a JCE member<sup>289</sup> and that he was the Chief of Staff of the JNA 9<sup>th</sup> Corps;<sup>290</sup>
- Crimes committed by Arkan and the SDG can be attributed to Arkan. The Chamber found that Arkan was a JCE member,<sup>291</sup> and that the SDG operated under his authority;<sup>292</sup>
- Crimes committed by the SAO-SBWS police and TO can be attributed to Goran Hadžić and/or Radovan Stojičić aka Badža. The Chamber found that both Hadžić and Badža were JCE members,<sup>293</sup> and that Hadžić, in late June and July 1991, and Badža, from August 1991 onwards, had leading roles in the formation of the SAO-SBWS police.<sup>294</sup> The Chamber further found that Hadžić appointed Badža as the commander of the SAO-SBWS TO either in August or September 1991, and he served in that role until the end of 1991;<sup>295</sup>
- Crimes committed by the SNB can be attributed to Hadžić. The Chamber found that Hadžić was a JCE member,<sup>296</sup> and that he established the SNB in May 1991;<sup>297</sup>
- Crimes committed by the RSK police can be attributed to Martić. The Chamber found that Martić was a JCE member.<sup>298</sup> As the RSK Minister of Interior, he was in control of the RSK police;<sup>299</sup>

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<sup>288</sup> See Judgement, para.481.

<sup>289</sup> Judgement, para.380.

<sup>290</sup> Judgement, para.31.

<sup>291</sup> Judgement, para.380.

<sup>292</sup> Judgement, paras.271 (referring to Arkan and *his* Serbian Volunteer Guard) (emphasis added), 441 (Arkan founded the Serbian Volunteer Guard).

<sup>293</sup> Judgement, para.380.

<sup>294</sup> Judgement, para.525.

<sup>295</sup> Judgement, paras.517-518, 520. *Also* Judgement para.510.

<sup>296</sup> Judgement, para.380.

<sup>297</sup> Judgement, para.526.

<sup>298</sup> Judgement, para.380.

<sup>299</sup> See Judgement, para.481.

- Crimes committed by Božović and those under his command in Dobož can be attributed to Stanišić and Simatović,<sup>300</sup> and/or to Milošević, as Božović was acting in concert with the JNA;<sup>301</sup>
- Crimes committed by the VRS and the Scorpions can be attributed to Mladić. The Chamber found that Mladić was a JCE member.<sup>302</sup> The record shows that Mladić was the Commander of the VRS Main Staff,<sup>303</sup> and that the Scorpions were acting in concert with the VRS while deployed in the 1995 Treskavica/Trnovo Operations;<sup>304</sup>
- In SAO-Krajina, crimes committed by other Serb forces acting in concert with JNA units (including the JNA 9<sup>th</sup> Corps) and/or SAO-Krajina police units and/or SAO-Krajina TO units are attributable to JCE members Milošević and/or Mladić and/or Babić and/or Martić; and
- In BiH, the crimes committed by other Serb forces acting in concert with the SDG and/or JNA and/or forces under Božović and/or VRS are attributable to Arkan and/or Milošević and/or Stanišić and Simatović and/or Mladić.

127. The Appeals Chamber should therefore find Stanišić and Simatović criminally responsible as members of a JCE for:

- Count 1: Persecution, Article 5(h) ICTY Statute;
- Count 2: Murder as a crime against humanity, Article 5(a) ICTY Statute;
- Count 3: Murder as a violation of the laws or customs of war, Article 3 ICTY Statute;
- Count 4: Deportation, Article 5(d) ICTY Statute; and
- Count 5: Other inhumane acts (forcible transfer), Article 5(i) ICTY Statute;

and increase their sentence accordingly.

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<sup>300</sup> *Above* paras.103-112.

<sup>301</sup> *Judgement*, para.242.

<sup>302</sup> *Judgement*, para.380.

<sup>303</sup> Exhs.P03395; P03566; P01249, p.53; R.Donia:T.37 (30-Jan-2018); R.Donia:Exh.P01598, p.10. *See* AF785, 798, 813, 818, 1222.

<sup>304</sup> Exh.P02416, paras.2-3.

**B. Sub-ground 1(B): The Chamber erred in law and/or fact in failing to find that Stanišić and Simatović shared the intent**

128. The Trial Chamber erred in law and/or fact in failing to find that Stanišić and Simatović shared the intent required for JCE liability.

**1. Sub-ground 1(B)(i): The Chamber erred in law in applying the beyond reasonable doubt standard to evidence in isolation**

129. The Chamber erred when it applied the beyond reasonable doubt standard of proof to evidence in isolation.<sup>305</sup> The law is clear that a trier of fact must apply the beyond reasonable doubt standard to the entire body of evidence and not in a piecemeal way to individual pieces of evidence.<sup>306</sup> The beyond reasonable doubt standard applies only to establishing facts that make up the elements of the crimes and the mode of responsibility.<sup>307</sup> This means—in relation to Stanišić’s and Simatović’s *mens rea* for JCE liability—only their shared intent had to be proven beyond reasonable doubt.

130. The Chamber applied the beyond reasonable doubt standard too early in its analysis. Rather than applying it only to the question of shared intent, it applied it to individual pieces of evidence and predicate facts in isolation on which—alone—the finding of shared intent did not depend.<sup>308</sup> The support that Stanišić and Simatović provided to Martić and the SAO-Krajina forces did not need to be “conclusive” as to their shared intent;<sup>309</sup> their failure to prevent or punish Unit members who committed crimes need not “alone [...] lead to the only reasonable inference” that they shared that intent;<sup>310</sup> nor did their involvement in various operations between 1992 and 1995 alone need to lead to the conclusion “beyond reasonable doubt that the Accused shared the common criminal purpose”.<sup>311</sup> Stanišić’s statements, made during one conversation with Karadžić, need not “demonstrate, in and of themselves, intent to further the common criminal purpose”,<sup>312</sup> nor did his presence and intervention at a meeting in Belgrade need to “demonstrate, beyond reasonable doubt,” that he shared that intent.<sup>313</sup> Similarly, a card Stanišić received from Martić need not be “decisive” of his intent.<sup>314</sup>

<sup>305</sup> See Judgement, paras.579, 581-584, 592-593.

<sup>306</sup> *Mrkšić* AJ, para.217; *Galić* AJ, paras.217-218; *Halilović* AJ, para.128.

<sup>307</sup> *Blagojević* AJ, para.226.

<sup>308</sup> See *Milošević* AJ, para.20.

<sup>309</sup> Judgement, para.579.

<sup>310</sup> Judgement, para.593.

<sup>311</sup> Judgement, para.592.

<sup>312</sup> Judgement, para.581.

<sup>313</sup> Judgement, para.582.

<sup>314</sup> Judgement, para.584.

131. Instead, taking the correct holistic approach, the Chamber should have evaluated whether all of this evidence—taken together—proves beyond reasonable doubt a material element of the crime,<sup>315</sup> namely the shared intent of the Accused. Had the Chamber done so, it would have found that this evidence together with the evidence that Stanišić and Simatović were aware of the campaign of forcible displacement targeting non-Serbs in Croatia and BiH—found proven beyond reasonable doubt by the Chamber<sup>316</sup>—proved that Stanišić and Simatović shared the intent to further the CCP.

2. Sub-ground 1(B)(ii): The Chamber erred in law by failing to consider all of Stanišić’s and Simatović’s relevant conduct when assessing their shared intent

132. Shared intent may be inferred from a variety of factors, such as knowledge of the CCP or the crimes it involved, the accused’s conduct, including their continued participation in the crimes or in the implementation of the CCP, as well as words uttered and interactions with other individuals.<sup>317</sup>

133. The Chamber acknowledged that, as a matter of law, the conduct it was entitled to rely on to assess shared intent is not limited to conduct that constitutes a contribution to the CCP.<sup>318</sup> It also claimed to have assessed evidence in relation to various operations or areas not directly concerning locations of crimes charged in the Indictment, such as Operation Pauk.<sup>319</sup>

134. While the Chamber paid lip-service to having “thoroughly considered” evidence in relation to operations not involving crimes charged,<sup>320</sup> it is apparent that it did not actually do so, since it never assessed how these operations furthered the CCP. Rather, it dismissed this entire body of evidence, finding it “generally insufficient” to conclude that Stanišić and Simatović shared the intent.<sup>321</sup>

135. By erroneously limiting its assessment of Stanišić’s and Simatović’s shared intent, the Chamber overlooked important conduct. In particular, the Chamber failed to take into account:

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<sup>315</sup> *Martić* AJ, para.55; *Krajišnik* AJ, para.685.

<sup>316</sup> Judgement, para.589.

<sup>317</sup> *Stanišić & Simatović* AJ, paras.81-82; *Popović* AJ, para.136; *Đorđević* AJ, para.512; *Krajišnik* AJ, paras.202, 697.

<sup>318</sup> Judgement, para.576.

<sup>319</sup> Judgement, para.20.

<sup>320</sup> Judgement, para.592.

<sup>321</sup> Judgement, para.592.



- Contributions to charged crimes which the Chamber failed to adjudicate in Bilje,<sup>322</sup> Doboj,<sup>323</sup> and Sanski Most,<sup>324</sup> namely that Stanišić and Simatović formed the Unit<sup>325</sup> and then deployed Unit members to Bilje where they committed crimes and expelled the non-Serb population; that Stanišić and Simatović trained Unit members at Ležimir and Pajzoš who later committed crimes in Doboj that forced the non-Serb population to flee; and that Stanišić and Simatović deployed forces into Sanski Most in 1995 in order to violently displace remaining non-Serb civilians from and maintain previously cleansed territory;
- Conduct found proven but rejected as a contribution, because it did not directly relate to crimes charged, namely that Stanišić and Simatović trained Serb forces who participated in ethnic cleansing operations in Brčko;<sup>326</sup> that Stanišić and Simatović trained, financed, and commanded Serb forces who participated in the 1993 Podrinje ethnic cleansing operations in eastern BiH;<sup>327</sup> that Stanišić and Simatović commanded, deployed, financed and/or supported the JATD, SDG and Scorpions in various operations, including the 1994 Operation Pauk, and the 1995 Treskavica/Trnovo and ARK Operations;<sup>328</sup> deployed Unit members to Western Srem;<sup>329</sup> that Stanišić facilitated the establishment of Serb structures through which the CCP was implemented in BiH through communication with Karadžić;<sup>330</sup> and that Stanišić and Simatović gathered intelligence through the SNB and other groups.<sup>331</sup>
- Conduct the Chamber erroneously concluded were not contributions in Western Srem,<sup>332</sup> Doboj,<sup>333</sup> and Sanski Most,<sup>334</sup> namely deploying Unit members to Western Srem where they committed crimes that led the non-Serb population to flee; deploying Božović and the group who went with him from Pajzoš to Doboj where they attacked and left the town “completely cleansed”; and financing the SDG who committed murders in Sanski Most.

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<sup>322</sup> *Above* paras.61-68, 117.

<sup>323</sup> *Above* paras.69-74, 117.

<sup>324</sup> *Above* paras.75-80, 81-94, 117.

<sup>325</sup> *Judgement*, para.388.

<sup>326</sup> *Above* paras.22-26.

<sup>327</sup> *Above* paras.27-33.

<sup>328</sup> *Above* paras.34-48.

<sup>329</sup> *Above* para.49.

<sup>330</sup> *Above* paras.50-51.

<sup>331</sup> *Above* paras.52-56.

<sup>332</sup> *Above* paras.96-102.

136. Moreover, the Chamber's intent analysis fails to refer at all to the speeches of approval that Stanišić and Simatović gave at the Unit's anniversary ceremony at the Kostić Centre in 1997. This ceremony, which was captured on video as exhibit P00256, was one of the most important pieces of the Prosecution's case,<sup>335</sup> as it reflects both Stanišić and Simatović applauding and embracing responsibility for the Unit's activities during the Indictment period. Far from denouncing the Unit's role in forcibly displacing thousands of non-Serbs, Simatović proudly reflected on the Unit's training of Serb forces (including at Golubić, Ležimir, Pajzoš (Ilok), Bosanski Šamac, Brčko, Ozren and Doboj) and joint operations (including the "corridor at Brčko" and the Drina (Podrinje) and Pauk operations).<sup>336</sup> Stanišić concluded the ceremony by personally giving Unit members awards for their actions.<sup>337</sup> Despite the obvious relevance of Stanišić's and Simatović's own statements about the Unit's actions, the Chamber did not consider this evidence in assessing their intent for the CCP, and referenced it in only one sentence in the entire Judgement.<sup>338</sup>

137. Had the Chamber properly assessed all of this conduct together with the evidence it did assess, it would have found Stanišić and Simatović shared the intent for the CCP with each other and the other JCE members, intending that persecution, forcible transfer, deportation, and murders of non-Serbs should be carried out to permanently remove them from the claimed territories in Croatia and BiH.

3. Sub-ground 1(B)(iii): The Chamber erred in fact in failing to find that Stanišić and Simatović shared the intent

138. No reasonable trier of fact could have failed to find that Stanišić and Simatović shared the intent for the CCP.<sup>339</sup> The Chamber's own findings and the totality of the evidence leave no doubt that Stanišić and Simatović did not only know of the criminal intent of the JCE members,<sup>340</sup> but that they shared that intent.

139. The Chamber concluded that Stanišić and Simatović were aware of the shared intent of the JCE members to forcibly and permanently remove the majority of non-Serbs from large

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<sup>333</sup> Above paras.103-112.

<sup>334</sup> Above paras.113-116.

<sup>335</sup> See Prosecution-FTB, Annex B.

<sup>336</sup> Exh.P00256, p.11.

<sup>337</sup> Exh.P00256, p.27.

<sup>338</sup> Judgement, para.429, fns.1710, 1711.

<sup>339</sup> Judgement, para.597.

<sup>340</sup> Judgement, para.594.

areas of Croatia and BiH through the commission of the crimes charged in Indictment.<sup>341</sup> Knowing how this plan was being implemented in practice, they supported the CCP in various ways over many years.

140. When looked at in context, the Chamber's conclusion that Stanišić and Simatović only knew about, but did not share, the CCP cannot be reconciled with the Chamber's own finding that they substantially contributed to the crimes committed during the Bosanski Šamac takeover operation in March 1992. Prior to this attack, Stanišić and Simatović allowed the use of their facilities and instructors to train Unit members and a group of approximately 20 local fighters at Ležimir and Pajzoš camps in coordination with JNA command and Belgrade officials.<sup>342</sup> The Chamber found that they would have been aware that in doing so they would be supporting "the commission of crimes by those forces."<sup>343</sup> During and after the takeover, while resubordinated to the JNA, members of the Unit and the local group, both trained and deployed by Stanišić and Simatović, committed persecution, murder and forcible displacement crimes.

141. By training the Unit and Bosanski Šamac locals and deploying them to participate in this attack, Stanišić and Simatović unequivocally manifested their shared intent to further the CCP. As the Chamber observed, the crimes committed in Bosanski Šamac were not an isolated incident.<sup>344</sup> They followed a pattern of crimes accompanying takeovers of territory by Serb forces, involving the expulsion of non-Serb inhabitants, intimidation, arbitrary detention, violence, and other crimes.<sup>345</sup> This contribution, made with full knowledge of the CCP and its implementation, can leave no doubt that Stanišić and Simatović shared the CCP from March 1992.

142. Had the Chamber considered the totality of the evidence, instead of assessing evidence in isolation, no doubt could remain that Stanišić and Simatović shared the intent to further the CCP.<sup>346</sup> Viewed together with this proven contribution in Bosanski Šamac, all of the alternative possibilities the Chamber left open based on a compartmentalised analysis of the evidence are unsustainable.

143. Even if the Chamber could have entertained the possibility that Stanišić's and Simatović's pre-CCP assistance to the Krajina Serbs was "not conclusive of their shared

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<sup>341</sup> Judgement, paras.586, 589, 594.

<sup>342</sup> Judgement, para.590.

<sup>343</sup> Judgement, para.418.

<sup>344</sup> Judgement, para.606.

<sup>345</sup> Judgement, paras.606-607.

intent”,<sup>347</sup> their thorough and contemporaneous knowledge of the events, coupled with their direct contribution to the JCE crimes in Bosanski Šamac eliminated any doubt that they shared the intent to further the CCP. Stanišić’s intention to support the CCP is further demonstrated by his 5 July 1994 letter of praise, which the Chamber found to “imply his endorsement and moral support for the acts of the Republic of Serbian Krajina police.”<sup>348</sup> Having participated in arming, training and financing Krajina police, and knowing that they had committed widespread crimes against non-Serbs—as Stanišić’s own Unit had done with impunity in Bosanski Šamac—instead of protecting the civilian population, Stanišić’s praise confirms his support for the CCP.

144. Likewise, Stanišić’s threat to “exterminate them completely” in a 22 January 1992 intercepted conversation with Karadžić cannot be viewed as merely an “unfortunate choice of words”<sup>349</sup> when they are seen together with his direct and substantial contribution to the crimes in Bosanski Šamac a few months later.<sup>350</sup> Nor can the notes in Mladić’s diary about a December 1993 meeting in Belgrade in which Stanišić is recorded as offering to help the Bosnian Serb “operational and tactical” position be dismissed as inconsequential. Whether or not his offer to send 100-120 men ever materialised, this is another contemporaneous example of Stanišić promising other JCE members to support the criminal goals of the CCP.<sup>351</sup> The Chamber’s acceptance that “Stanišić and Simatović communicated and/or cooperated with senior members of the political, military and police leadership in Serbia, the SAO Krajina, the SAO SBWS, and the Bosnian Serb Republic, who were found to be also members of the joint criminal enterprise”<sup>352</sup> should have led not only to the inference that they were aware of the JCE members’ intent, but that they, too, shared it. This communication and coordination could not be viewed as benign in light of Stanišić’s and Simatović’s proven contributions to this years-long criminal campaign.

145. The Chamber’s conclusion that there is “limited evidence”<sup>353</sup> of crimes being committed by forces under Stanišić’s and Simatović’s authority is misleading. The Judgement details the many ways that Stanišić and Simatović worked collaboratively with other JCE

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<sup>346</sup> Above paras.129-131.

<sup>347</sup> Judgement para.578.

<sup>348</sup> Judgement, para.583.

<sup>349</sup> Judgement, para.581.

<sup>350</sup> Judgement, paras.586-589.

<sup>351</sup> Judgement, fn.2324.

<sup>352</sup> Judgement, para.594

<sup>353</sup> Judgement, para.596.

members to further the CCP. Even if this conduct was—erroneously<sup>354</sup>—not counted as a contribution and even if it was not criminal in itself, it does offer further confirmation of Stanišić’s and Simatović’s intent. For example, the Chamber found that many of the forces and people who participated in the crimes furthering the CCP were trained at camps run by Stanišić and Simatović. By March 1992, the Chamber found that Stanišić and Simatović would have been aware that by training locals at Ležimir and Pajzoš in coordination with the JNA, they were supporting the commission of crimes.<sup>355</sup>

146. Similarly, although the Chamber was not satisfied beyond reasonable doubt that Stanišić and Simatović provided substantial assistance or support to the SDG members who were specifically involved in the commission of crimes charged in the Indictment,<sup>356</sup> the Chamber acknowledged the evidence that the SerbianDB made payments to the SDG, including payments to a number of SDG members who participated in the 1995 ARK Operation, which included Sanski Most.<sup>357</sup> This financing of forces under the command of Arkan,<sup>358</sup> a JCE member—forces that the Chamber found to have perpetrated crimes furthering the CCP in 1991 and 1992, in SAO-SBWS, Bijeljina and Zvornik—shows Stanišić and Simatović’s support of the CCP. Even if it is not found to be a direct contribution to a specific crime, such financing still leads to the conclusion that Stanišić and Simatović shared the intent to further the CCP.

147. Moreover, Stanišić’s and Simatović’s Unit and forces trained by them were also involved in a number of other operations that aimed at forcibly and permanently removing the majority of non-Serbs from large areas of Croatia and BiH. While these operations did not directly result in the commission of the crimes charged in the Indictment, they contributed to the same overarching goal and the CCP, which is broader than the charged crimes.<sup>359</sup> The fact that Stanišić and Simatović and forces under their control, including the Unit and the JATD, participated in a broad range of operations supporting the CCP over many years is a clear indicator of their shared intent. The fact that Stanišić and Simatović lauded these actions in the Unit’s anniversary ceremony at the Kostić Centre in 1997 is further evidence that they intended these contributions.<sup>360</sup>

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<sup>354</sup> *Above* paras.17-59.

<sup>355</sup> *Judgement*, para.418

<sup>356</sup> *Judgement*, para.456.

<sup>357</sup> *Judgement* para.453.

<sup>358</sup> *Above* paras.88-93, 113-116.

<sup>359</sup> *Above* paras.17-59.

<sup>360</sup> Exh.P00256, pp.11, 27.

148. No reasonable trier of fact could have looked at the totality of the evidence accepted by the Chamber in this case and concluded that Stanišić and Simatović only knew about the CCP, but did not share it. Any doubt about their intent would have been dispelled, at the latest, when they deployed the Unit to participate in the Bosanski Šamac attack in furtherance of the CCP.

#### 4. Remedy

149. Based on the above, the Appeals Chamber should correct the Chamber's error and find that Stanišić and Simatović shared the intent for the CCP from at least August 1991,<sup>361</sup> including by taking into account the additional contributions set out in Sub-ground 1(A). Should the Appeals Chamber not be persuaded that Stanišić and/or Simatović shared the intent from August 1991 onwards, it should assess whether they did share it from a later point in time or in relation to a more limited geographic area. At a minimum, Stanišić and Simatović shared the intent from before the Bosanski Šamac operation and in relation to the events in BiH.

150. Given the Chamber's finding that Stanišić and Simatović contributed to the CCP through organising the training of Unit members and local Serb forces at the Pajzoš camp and through their subsequent deployment during the takeover of Bosanski Šamac in April 1992,<sup>362</sup> which amounts to a significant contribution to the CCP, the Appeals Chamber should convict Stanišić and Simatović as members of a JCE for the charged crimes it found were committed pursuant to the CCP and which are attributable to Stanišić and Simatović directly or via one of the other JCE members, as set out above.

151. Moreover, if Ground 1(A) is granted, the Chamber should also consider these additional contributions in convicting them as JCE members for the charged crimes as set out above.<sup>363</sup>

152. The Appeals Chamber should therefore find Stanišić and Simatović guilty as members of a JCE for:

- Count 1: Persecution, Article 5(h) ICTY Statute;
- Count 2: Murder as a crime against humanity, Article 5(a) ICTY Statute;

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<sup>361</sup> See Judgement, para.379.

<sup>362</sup> Judgement, para.597.

<sup>363</sup> Above paras.118-127.

- Count 3: Murder as a violation of the laws or customs of war, Article 3 ICTY Statute;
- Count 4: Deportation, Article 5(d) ICTY Statute; and
- Count 5: Other inhumane acts (forcible transfer), Article 5(i) ICTY Statute;

and increase their sentences accordingly.

**C. Sub-ground 1(C): The Chamber erred in law in excluding and/or not relying on relevant and probative evidence**

153. On 2 February 2017, the Chamber issued a ruling effectively limiting the Prosecution to calling the same evidence in the retrial that it had introduced during the original ICTY Trial.<sup>364</sup> This “Exclusionary Rule” was subject to only two<sup>365</sup> narrow exceptions.<sup>366</sup> No similar restrictions were imposed on the Defence. While the Chamber was rightly concerned with ensuring that Stanišić’s and Simatović’s right to an expeditious trial was respected, it erred in law by: (i) interfering with the Prosecution’s selection of witnesses, which is a matter of Prosecution trial strategy; (ii) failing to give effect to the ICTY Appeals Chamber’s order for a full retrial as opposed to a remittance; and (iii) excluding an entire category of evidence regardless of whether the proffered evidence met the standard for admissibility under the Rules of Evidence and Procedure, or despite finding that it did meet this standard. Both Stanišić and the Prosecution sought certification to appeal the 2 February Decision, which was denied,<sup>367</sup> as was the Prosecution’s motion to the Appeals Chamber for enforcement of the order for a retrial.<sup>368</sup> This improper restriction undermined the role of the Prosecution and its ability to prove its case.

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<sup>364</sup> 2 February Decision.

<sup>365</sup> First, where due to “circumstances outside of the Prosecution’s control” evidence presented during the original trial was no longer available, the Prosecution could seek to substitute new evidence on the retrial. Second, in “exceptional circumstances,” the Prosecution would be permitted to introduce “fresh” evidence (*i.e.*: evidence that was not available during the original trial and appeal proceedings, could not have been discovered through the exercise of due diligence, and the admission of which would be in the interests of justice). 2 February Decision, para.23. The exceptions were strictly interpreted. For example, RFJ-030’s evidence was disallowed on the basis it could have been discovered through the exercise of due diligence at the first trial, even though he did not provide a statement until late 2012, after the Defence had closed its case in the original ICTY proceedings. *See* Ahrens Evidence Decision, p.2; Ahrens Evidence Motion, para.23.

<sup>366</sup> In subsequent decisions, the Chamber appears to have created a third exception; evidence could be admitted if it was “critical” to the Prosecution’s case. The Chamber held that evidence which was available at the time of the original ICTY proceedings but which the Prosecution elected not to call, could never be considered “critical” to the Prosecution’s case. *E.g.* [REDACTED].

<sup>367</sup> 1 March 2017 Certification Decision, para.13.

<sup>368</sup> Retrial Enforcement Decision, para.10.

154. As a result of the 2 February Decision, the Prosecution was ordered to re-file its pre-trial materials without reference to any new evidence—regardless of the relevance and probative value of such evidence. Following this order, the Prosecution eliminated 24 witnesses from its revised Rule 70 filing on the basis that their evidence did not fall within either of the two exceptions established by the Chamber for the receipt of new evidence.<sup>369</sup>

155. While the Prosecution was able to call a limited number of new witnesses who fit within the exceptions, the Chamber dismissed Prosecution motions for the admission of the evidence of another 30 witnesses on the basis that the proposed evidence did not satisfy the requirements of the 2 February Decision, despite finding in some instances that the proposed evidence appeared relevant.<sup>370</sup> [REDACTED].<sup>371</sup> Of the new witnesses who were allowed,<sup>372</sup> the evidence of five was limited in scope based on the Exclusionary Rule.<sup>373</sup> The Trial Chamber also denied admission of over 450 exhibits based on the Exclusionary Rule, despite finding that much of the evidence “appear[ed] relevant.”<sup>374</sup>

1. The Exclusionary Rule improperly interfered with matters of Prosecution trial strategy

156. In imposing the Exclusionary Rule, the Chamber overstepped its role by constricting the Prosecution’s choice of evidence to witnesses and exhibits adduced in the ICTY trial.

157. The Prosecution is vested by Article 14 of the IRMCT Statute with the responsibility to both investigate and prosecute before the Mechanism.<sup>375</sup> The IRMCT Rules empower the Prosecution to select the witnesses “the Prosecutor intends to call” and the “list of exhibits the

<sup>369</sup> See Revised Prosecution Rule 70(E) Filings [REDACTED].

<sup>370</sup> Laber, Jeri (RFJ-152): Laber Evidence Decision; RFJ-013: RFJ-013 Evidence Decision; Ahrens, Geert (RFJ-030): Ahrens Evidence Decision; Jerneić, Juraj (RFJ-094): Jerneić Evidence Decision; RFJ-009, RFJ-133, RFJ-044, RFJ-071, RFJ-171: [REDACTED]; RFJ-070: RFJ-070 Evidence Decision; RFJ-074, RFJ-172, RFJ-131, RFJ-006, RFJ-058, RFJ-076: Rule 112 Evidence Decision; [REDACTED]; [REDACTED]; Bracić, Velibor (RFJ-149), Haviv, Ron (RFJ-119), RFJ-090, RFJ-050, Negga, Blandina (RFJ-087), RFJ-168, RFJ-148, RFJ-127, Gaši, Isak (RFJ-134): 19 September 2018 Evidence Decision; Van Lynden, Aernout (RFJ-001), McElligott, John (RFJ-086), Karajčić, Davor (RFJ-177): 26 September 2018 Evidence Decision. See 16 May 2018 Certification Decision; 26 September 2018 Certification Decision; 2 October 2018 Certification Decision; 5 November 2018 Certification Decision.

<sup>371</sup> [REDACTED].

<sup>372</sup> The Chamber states that it allowed the testimony of 18 Prosecution witnesses who were not called in the ICTY trial. See Judgement para.10. The Prosecution counts 16 witnesses whose evidence was not part of the ICTY trial [REDACTED]. Three of these witnesses were listed as Prosecution witnesses during the ICTY trial, but never testified [REDACTED].

<sup>373</sup> [REDACTED]; [REDACTED]; Rule 112 Evidence Decision, para.39.

<sup>374</sup> See e.g. Decision on Prosecution Bar Table Motion (Documents and Videos), p.2 (47 denied); Corrigendum to Decision on Prosecution Bar Table Motion (Bosnia) (160 denied); Decision on Prosecution Bar Table Motion (Croatia), p.2 (200 denied); [REDACTED]; [REDACTED].

<sup>375</sup> Also IRMCT Statute Art.16; IRMCT Rule 35.



Prosecutor intends to offer” in order to prove the allegations in the Indictment.<sup>376</sup> Pursuant to IRMCT Rule 102, the Prosecutor is entitled to “call witnesses and present evidence.” In addition, this Chamber has recognized that matters of trial strategy, such as the structure of a cross-examination, rest squarely within the discretion of counsel.<sup>377</sup> Both the Prosecution and the Defence are entitled to develop and pursue litigation strategies.<sup>378</sup> The case law is clear: “[I]t is not for the Trial Chamber to dictate to a party how to present its case.”<sup>379</sup> While the IRMCT Rules permit the Chamber to impose limits on the total number of witnesses the Prosecution (and Defence) may call, and the time available for the presentation of evidence,<sup>380</sup> the *selection* of Prosecution and Defence evidence from the pool of available evidence is a matter of trial tactics that falls exclusively within the purview of the parties.<sup>381</sup> While a trial chamber may prohibit a party from calling witnesses whose proposed evidence is irrelevant, unduly prejudicial, or otherwise prohibited by the IRMCT Rules,<sup>382</sup> these considerations were not the basis for the Chamber’s blanket exclusion of new evidence.

158. Only Prosecution and Defence counsel can determine which witnesses will best advance their respective cases. Counsel are aware of their witnesses’ mental and physical health, personal circumstances, and ability to recollect the events in question, to which the Chamber simply is not privy. There are many strategic considerations that inform counsels’ selection of witnesses. On a retrial, some of these considerations become more complex because of the existence of the first trial record.<sup>383</sup>

159. The Chamber offered no explanation for its conclusion that allowing new evidence “would inevitably prolong the proceedings.”<sup>384</sup> To address any concern about delay, the

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<sup>376</sup> IRMCT Rule 70(E)(ii), (iii).

<sup>377</sup> *Bikindi* AJ, paras.10, 44; *Nchamihigo* AJ, para.5.

<sup>378</sup> *Rutaganda* AJ, paras.7, 241-242; *Nchamihigo* AJ, para.5; *Bikindi* AJ, paras.10, 22, 44.

<sup>379</sup> *Bikindi* AJ, para.22; *Krajišnik* AJ, para.42; *Nchamihigo* AJ, para.5.

<sup>380</sup> *Galić* Decision, para.7.

<sup>381</sup> While the Chamber is empowered to call its own witnesses, Rule 120 does not empower the Chamber to compel either the Prosecution or Defence to call a witness.

<sup>382</sup> *E.g.* IRMCT Rules 105(D), 117, 118.

<sup>383</sup> For example, some factors counsel may consider in deciding whether to call a witness include: (i) the witness’ ability to observe the events in question; (ii) the quality of the witness’ recollection (taking into account the passage of time, age and infirmity); (iii) the witness’ credibility (including intervening events between the first trial and the retrial); (iv) the availability of corroborative evidence (including new corroborative evidence that may have come to light after the original proceedings were concluded); (v) whether the witness is able to give evidence relevant to multiple counts or issues; (vi) the witness’ psychological health and potential that testifying will retraumatize the witness; (vii) the witness’ willingness to testify; (viii) whether the witness is now recanting or has given inconsistent statements; (ix) practical impacts of asking the witness to travel to The Hague to testify including loss of income, family responsibilities and health concerns; (x) the witness’ ability to address perceived weaknesses in the case; and (xi) how the witness performed at the original trial and the fact that opposing counsel will have a second chance to cross-examine the witness; (xi) witness security concerns.

<sup>384</sup> 2 February Decision, para.21.

Chamber could have awarded the Prosecution less than the 120 hours requested for direct examinations while leaving the Prosecution to determine which witnesses to eliminate. Similarly, it could have ordered the Prosecution to abstain from calling any new witnesses until the end of its case, in order to ensure the Defence had sufficient time to conclude its investigations before those witnesses testified.<sup>385</sup> In any event, the Chamber decided for reasons related to the Accused's health to sit only nine hours per week, which would have afforded the Defence ample time to investigate any new evidence while the trial was ongoing.<sup>386</sup>

160. Further, the Chamber's reasoning—that the Prosecution would be content to call the same evidence on a retrial that it called at the ICTY Trial because it sought remittance as an alternative remedy before the Appeals Chamber<sup>387</sup>—is flawed. The Prosecution was satisfied with the Appeals Chamber determining Stanišić and Simatović's JCE liability on the basis of the original ICTY Trial record. However, once a retrial was ordered, it was impossible to recreate the original trial record. The Chamber ignored that the record on the retrial would necessarily be different. Even if the Prosecution had called all the same witnesses and adduced the same evidence, the Prosecution's case would be diminished because witness memory deteriorates over time. The Defence too would have a "second chance"<sup>388</sup> to make their case, including by cross-examining Prosecution witnesses based on their evidence from the first trial.

2. The Exclusionary Rule is inconsistent with the ICTY Appeals Chamber's order for a full retrial

161. The Exclusionary Rule violated the ICTY Appeals Chamber's determination that a full retrial was required.<sup>389</sup> The ICTY Appeals Chamber deliberately selected a retrial over a remittance to a chamber on the original record, holding that "in the circumstances of this case, the interests of justice would not be well served if a retrial were not ordered."<sup>390</sup> The Chamber erred in failing to give effect to the ICTY Appeals Chamber order by restricting the Prosecution to the evidence it adduced at the ICTY Trial.

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<sup>385</sup> 2 February Decision, para.21.

<sup>386</sup> Trial Modalities Decision, para.32, Annex A, para.2.

<sup>387</sup> 2 February Decision, para.22.

<sup>388</sup> 2 February Decision, para.22 (referring to the "second-chance" given to the Prosecution in a retrial to make its case).

<sup>389</sup> *Stanišić and Simatović* AJ, paras.122-131.

<sup>390</sup> *Stanišić and Simatović* AJ, paras.122-131.

162. A retrial is, by definition, a hearing *de novo* which includes the possibility of hearing evidence that was not presented during the initial proceedings.<sup>391</sup> Both the Prosecution and Defence are entitled to pursue new trial strategies on a retrial.<sup>392</sup> When a retrial is ordered it is as if the original trial never occurred. Any restrictions on the scope of a retrial must be made explicit by an Appeals Chamber.<sup>393</sup> Although it was open to the Appeals Chamber to impose restrictions on the scope of the retrial,<sup>394</sup> it declined to do so in this case.

163. By reducing the scope of available evidence, the Chamber allowed the Prosecution to engage in only in an attempt to re-enact the ICTY Trial rather than an actual retrial without restrictions, as ordered by the Appeals Chamber.

### 3. The Chamber failed to determine the admissibility of the evidence in accordance with the Rules

164. The Exclusionary Rule effectively prevented the Chamber from exercising its truth-seeking function. The Chamber was not able to genuinely exercise the discretion conferred on it by IRMCT Rule 105(C) and (D): to assess whether the probative value of a particular witness or piece of evidence was outweighed by fair trial concerns. Rather than assessing each new witness and item of evidence proffered by the Prosecution on the basis of relevance, probative value and prejudicial effect as required by the Rules, the Chamber excluded an entire category of evidence. This included evidence the Chamber conceded appeared relevant.

165. There was no genuine effort to assess whether the new evidence would necessarily have caused delay. The Prosecution asked for slightly less time for its direct examinations in the retrial (including the new witnesses) than it had sought in the ICTY Trial.<sup>395</sup> As discussed above, the Chamber gave no real consideration to the question of whether there were less intrusive remedies that could have minimized any delay arising from the Defence desire to conduct further investigations.

166. Rather than restricting the Prosecution to the ICTY Trial evidence, the Chamber should have allowed the Prosecution to present its case and evaluated the admissibility of the

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<sup>391</sup> *Muvunyi* Retrial Decision, para.13; *Haradinaj* Retrial Decision, para.24.

<sup>392</sup> *Muvunyi* Retrial Decision, para.18.

<sup>393</sup> *Haradinaj* Retrial Decision, paras.22-23.

<sup>394</sup> *Haradinaj* Retrial Decision, para.26; *Muvunyi* Retrial Decision, para.14.

<sup>395</sup> See [REDACTED]. The Prosecution initially sought to call 122 witnesses, asking for 124.5 hours to complete direct examinations. It filed the *Stanišić & Simatović* Prosecution Updated *65ter* List, containing 101 witnesses, 130 hours for direct examinations. In its Rule 70 Prosecution Motion, para.5, the Prosecution asked for 120 hours for its direct examinations.

new evidence based on the criteria set out in the Rules. This approach would have been consistent with the *Haradinaj* Retrial Decision, which reaffirms the Chamber’s “continuing duty to apply fair trial principles” and recognized the need for the Chamber to be “particularly mindful of any potential prejudice that the admission of new evidence may cause to the fair trial rights of the Accused.”<sup>396</sup> The *Haradinaj* Retrial Decision did not create a new area of discretion that would permit a trial chamber to effectively ignore an Appeals Chamber’s order for a full retrial.

#### 4. Remedy

167. The Prosecution requests that the Appeals Chamber: (i) declare that the Chamber erred in law in imposing the Exclusionary Rule; and (ii) include evidence erroneously excluded by the Chamber that is admitted as additional evidence on appeal under IRMCT Rule 142.<sup>397</sup>

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<sup>396</sup> *Haradinaj* Retrial Decision, para.26.

<sup>397</sup> *See* Retrial Enforcement Decision, para.10.

**III. GROUND 2: THE CHAMBER ERRED IN FAILING TO HOLD STANIŠIĆ AND SIMATOVIĆ CRIMINALLY RESPONSIBLE FOR AIDING AND ABETTING CRIMES IN SAO-KRAJINA, SAO-SBWS, DOBOJ AND SANSKI MOST**

168. The Chamber erred when it failed to hold Stanišić and Simatović criminally responsible for aiding and abetting the crimes in SAO-Krajina, SAO-SBWS, Doboj and Sanski Most. Having determined that Stanišić and Simatović were not responsible for committing those crimes as JCE members, the Chamber was required to consider other charged modes of liability before entering an acquittal. Had it done so, it would have found them responsible for aiding and abetting crimes in those locations.

**A. Sub-ground 2(A): The Chamber erred in law in failing to adjudicate and/or provide a reasoned opinion on whether Stanišić and Simatović aided and abetted crimes in SAO-Krajina, SAO-SBWS, Doboj and Sanski Most**

169. Before entering an acquittal, a chamber must adjudicate an accused’s responsibility under all charged modes.<sup>398</sup> The Chamber acknowledged that after finding that Stanišić and Simatović did not share the JCE intent,<sup>399</sup> and were therefore not criminally liable as JCE members, it had to assess whether a conviction could be entered for the alternative charged modes of liability, in particular aiding and abetting.<sup>400</sup>

170. The Chamber, however, limited its aiding and abetting adjudication to crimes in Bosanski Šamac.<sup>401</sup> The Chamber addressed liability for aiding and abetting crimes in other locations—as well as liability for planning and ordering—in a single sentence: “The Prosecution has not proven beyond reasonable doubt that the Accused are responsible for planning, ordering, or aiding and abetting any other crime charged in the Indictment.”<sup>402</sup> This sentence falls short of what is required for adjudication.

171. To the extent the Appeals Chamber takes the view that this one sentence amounts to adjudication of Stanišić’s and Simatović’s individual criminal responsibility for aiding and abetting in other locations, the Chamber failed to provide a reasoned opinion. A reasoned

<sup>398</sup> *Prlić* AJ, paras.3149-3150; *Gacumbitsi* AJ, paras.120-124. Also *Stakić* TJ, para.467.

<sup>399</sup> Judgement, paras.597-598.

<sup>400</sup> See Judgement, paras.599-600, 608; Prosecution-FTB, Section V.

<sup>401</sup> Judgement, paras.604-608. See Prosecution-FTB, Section V.B.

<sup>402</sup> Judgement, para.608.

opinion is essential to ensuring that the Tribunal's decisions are fair and that parties can meaningfully exercise their right to appeal.<sup>403</sup> A trial chamber is expected to "set out in a clear and articulate manner the factual and legal findings on the basis of which it reached the decision to convict or acquit an accused."<sup>404</sup> In particular, a trial chamber must set out its findings on facts essential to an accused's conviction for a particular count.<sup>405</sup> The absence of those relevant findings constitutes a "manifest failure to provide a reasoned opinion".<sup>406</sup> This one sentence clearly falls short of the requirements for a reasoned opinion.

172. The Chamber thus erred when it failed to set out its findings related to Stanišić's and Simatović's criminal liability for aiding and abetting the charged crimes in locations other than Bosanski Šamac.

173. In its analysis of aiding and abetting liability, the Chamber was required to consider the totality of Stanišić's and Simatović's contributions to the crimes. This included conduct occurring prior to the formation of the CCP, which was not counted as a contribution for the purpose of assessing JCE liability.<sup>407</sup> Since the timing of the contribution is not a relevant factor for aiding and abetting liability, the Chamber should have considered pre-CCP contributions in their aiding and abetting analysis.

174. Had the Chamber properly analysed Stanišić's and Simatović's contributions to the crimes in SAO-Krajina, SAO-SBWS, Doboje and Sanski Most, it would have found that they substantially contributed<sup>408</sup> to the crimes of deportation, forcible transfer, persecution, and murder in each of the locations. It would also have found that Stanišić and Simatović were aware of the probability that these crimes would occur and that their conduct would assist in their commission,<sup>409</sup> as set out below.<sup>410</sup>

175. The Appeals Chamber should correct the Chamber's error, and find that Stanišić and Simatović substantially contributed to murder, persecution, deportation and forcible transfer

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<sup>403</sup> *Stanišić & Simatović* AJ, para.78.

<sup>404</sup> *Prlić* AJ, para.3099 *citing Stanišić & Simatović* AJ, para.78; *Stanišić & Župljanin* AJ, paras.139-140; *Bizimungu* AJ, para.18.

<sup>405</sup> *Stanišić & Simatović* AJ, para.78.

<sup>406</sup> *Bizimungu* AJ, para.19.

<sup>407</sup> *See* Judgment, paras.388, 397, 405, 409, 435, 505, 536-537.

<sup>408</sup> *See Popović* AJ, para.1758; *Šainović* AJ, para.1649.

<sup>409</sup> *See Šainović* AJ, para.1772; *Simić* AJ, para.86; *Lukić* AJ, paras.428, 440; *Haradinaj* AJ, para.58.

<sup>410</sup> *Below* paras.177-217.

in SAO-Krajina, SAO-SBWS, Dobož and Sanski Most. It should further find that they acted with the requisite *mens rea* for aiding and abetting liability.<sup>411</sup>

176. The Appeals Chamber should find Stanišić and Simatović guilty for aiding and abetting in relation to SAO-Krajina, SAO-SBWS, Dobož and Sanski Most under

- Count 1: Persecution, Article 5(h) ICTY Statute;
- Count 2: Murder as a crime against humanity, Article 5(a) ICTY Statute;
- Count 3: Murder as a violation of the laws or customs of war, Article 3 ICTY Statute;
- Count 4: Deportation, Article 5(d) ICTY Statute; and
- Count 5: Other inhumane acts (forcible transfer), Article 5(i) ICTY Statute;

and increase their sentences accordingly.

**B. Sub-ground 2(B): The Chamber erred in fact in failing to find that Stanišić and Simatović aided and abetted crimes in SAO-Krajina, SAO-SBWS, Dobož and Sanski Most**

177. The Chamber erred in fact in failing to hold Stanišić and Simatović responsible for aiding and abetting crimes in SAO-Krajina, SAO-SBWS, Dobož and Sanski Most.<sup>412</sup> On the basis of the Chamber's own findings and the evidence on the record, no reasonable trial chamber could have found that Stanišić and Simatović were only responsible for aiding and abetting crimes in Bosanski Šamac.

**1. Stanišić and Simatović aided and abetted crimes committed by Unit members and the SAO-Krajina police and TO in SAO-Krajina**

178. The Chamber found that persecution and forcible displacement were committed in SAO-Krajina by Serb forces, including Unit members and the SAO-Krajina police and TO, and that murders were committed by the SAO-Krajina police and TO, from 26 August 1991 until at least December 1991.<sup>413</sup> No reasonable trial chamber could have failed to find that Stanišić and Simatović aided and abetted these crimes by facilitating the training of future

<sup>411</sup> Below paras.177-217.

<sup>412</sup> See Judgement, paras.604-608.

<sup>413</sup> See Judgement, paras.299, 302, 311, 316-318, 322-325. Also Judgement, para.102.

Unit members and the SAO-Krajina police<sup>414</sup> and TO at the Golubić camp and by arming and equipping Martić and the newly-established SAO-Krajina police.

(a) Stanišić and Simatović substantially contributed to the crimes committed by Unit members and the SAO-Krajina police and TO

179. Based on the Chamber’s findings, Stanišić and Simatović substantially contributed<sup>415</sup> to the crimes committed by Unit members and the SAO-Krajina police and TO. The Chamber found that Stanišić and Simatović:

- provided Martić and the SAO-Krajina police with weapons, communication equipment, technical assistance and financial support between late 1990 and mid-1991;<sup>416</sup> and
- contributed to the training of “several hundred members” of the SAO-Krajina police and TO and other volunteers—including future Unit members<sup>417</sup>—at the Golubić camp between May and late July 1991 by facilitating instruction through SerbianDB-affiliated trainers, including Captain Dragan,<sup>418</sup> and by funding the training of SAO-Krajina special police units.<sup>419</sup>

180. Stanišić’s and Simatović’s assistance enabled Unit members and the SAO-Krajina police and TO to participate in subsequent operations in SAO-Krajina involving widespread crimes.

181. The Chamber recognised the link between the assistance provided and the crimes committed. For instance, the Chamber found that Golubić-trained Unit members and Golubić-trained SAO-Krajina police units were deployed in forcible displacement campaigns in

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<sup>414</sup> The Chamber’s findings establish that the SAO-Krajina police consisted of regular and special purpose police units. Both the regular and special purpose units were under the control of Martić. Following the adoption by the SAO-Krajina government in August 1991 of the decision on the application of the Law on Defence of the Republic of Serbia on the territory of the SAO-Krajina, the special purpose units were *de jure* under the command of Milan Babić as President of the SAO-Krajina government. *See* Judgement, paras.481-482. The Chamber also accepted evidence demonstrating that Martić retained control over the special purpose police units. *See* Judgement, fn.1932 *citing* R.Makšić:Exh.P00025, para.66 (the special purpose units were directly subordinated to Martić). *Also* R.Makšić:Exh.P00025, para.18 (R.Makšić was posted to the SAO-Krajina between 1 October 1991 and 31 December 1991). For ease of reference, the term “SAO-Krajina police” is used throughout this Brief to collectively refer to the SAO-Krajina regular and special purpose police units.

<sup>415</sup> *See* Popović AJ, para.1758; Šainović AJ, para.1649; Blaškić AJ, para.46.

<sup>416</sup> *See* Judgement, paras.491, 494-495, 498, 501, 505.

<sup>417</sup> *See* Judgement, paras.388, 405.

<sup>418</sup> *See* Judgement, paras.396-397, 399-400, 409, 435.

<sup>419</sup> *See* Judgment, para.495.



Kijevo, Saborsko and Škabrnja aimed at expelling the non-Serb population.<sup>420</sup> In addition, evidence acknowledged by the Chamber shows that the weapons Stanišić and Simatović provided to Martić were used by Serb forces during operations in SAO-Krajina in the second half of 1991.<sup>421</sup> The assistance provided by Stanišić and Simatović thus substantially contributed to these crimes.

(b) Stanišić and Simatović possessed the *mens rea* to aid and abet the crimes committed by Unit members and the SAO-Krajina police and TO

182. The Chamber’s findings and the evidence on the record show that Stanišić and Simatović trained the SAO-Krajina police and TO and other volunteers, including future Unit members, and armed and equipped Martić and the newly-established SAO-Krajina police, with awareness of the probability that they would commit murder, persecution and forcible displacement, and that their acts would assist in the commission of those crimes.<sup>422</sup>

183. The Chamber found that, during the Indictment period, commencing in April 1991,<sup>423</sup> Stanišić and Simatović were aware of the campaign of forcible displacement targeting non-Serbs in Croatia and BiH.<sup>424</sup> The Chamber acknowledged that Stanišić had “comprehensive knowledge” of events on the ground in Croatia and BiH, and that Simatović—whose primary task in Croatia and BiH was collecting intelligence—had “unimpeded access” to information thereon.<sup>425</sup> Moreover, the Chamber concluded that on account of their “unfettered access” to intelligence information through various channels, attendance at meetings—beginning in SAO-Krajina in mid-1990,<sup>426</sup> including with Martić over whom Stanišić exercised influence<sup>427</sup>—and presence on the ground, Stanišić and Simatović were aware of the sentiment of local Serb leaders to defend what they considered to be Serb land.<sup>428</sup>

184. The Chamber’s findings establish that, beginning in 1990 and continuing in 1991, SAO-Krajina and SAO-SBWS authorities instituted discriminatory policies and were directly involved in crimes and other acts of violence committed against non-Serbs with increased

<sup>420</sup> See Judgement, paras.31-32, 58-66, 81-82.

<sup>421</sup> See Judgement, fn.1997.

<sup>422</sup> See *Šainović* AJ, para.1772; *Simić* AJ, para.86; *Lukić* AJ, paras.428, 440; *Haradinaj* AJ, para.58.

<sup>423</sup> Judgement, para.3; Indictment, paras.3, 4, 8, 11, 22, 26.

<sup>424</sup> See Judgement, paras.589, 607.

<sup>425</sup> See Judgement, paras.586-589.

<sup>426</sup> Judgement, para.586. *Also e.g.* Judgement, paras.26, 398, 492, 502.

<sup>427</sup> See Judgement, paras.479-480, 485, 487.

<sup>428</sup> See Judgement, para.578. *Also* Judgement, paras.483, 586.

frequency.<sup>429</sup> The takeovers of towns and villages in SAO-Krajina thus did not occur as isolated incidents, but were part of a series of violent crimes across SAO-Krajina and SAO-SBWS during this period which were aimed at expelling the non-Serb population.<sup>430</sup>

185. The Chamber's findings further establish that by May 1991, as SerbianDB-affiliated instructors were training the SAO-Krajina police and TO and other volunteers—including future Unit members<sup>431</sup>—at the Golubić camp,<sup>432</sup> the SAO-Krajina police raided predominantly Croat villages in the Knin area, including Potkonje and Vrpolje, and disarmed Croats.<sup>433</sup> Evidence relied upon by the Chamber further shows that the SAO-Krajina police went door by door telling non-Serbs to leave, beat them, poisoned their livestock, destroyed their orchards, and searched and burned their houses.<sup>434</sup> Terrorised by the raids and increasing violence, hundreds of Croat families fled to Šibenik in May and June 1991.<sup>435</sup>

186. Moreover, as acknowledged by the Chamber, Martić began to signal his intent to achieve his goals through the commission of crimes prior to August 1991.<sup>436</sup> The Chamber's findings establish that Martić played a key role in provoking and escalating ethnic tensions through violent acts directed against non-Serbs in SAO-Krajina from October 1990.<sup>437</sup> The record further shows that, known for his violence, abuse of police authority,<sup>438</sup> and extremist views,<sup>439</sup> Martić encouraged forces under his authority to commit killings and attacks on Croat homes and businesses by publicly declining to investigate their crimes in April 1991.<sup>440</sup> In addition, [REDACTED].<sup>441</sup>

187. Given the scope of their knowledge,<sup>442</sup> Stanišić and Simatović must have known that this was the background against which they facilitated training at Golubić and armed and equipped Martić and the SAO-Krajina police. Simatović, who was based in Knin from April

<sup>429</sup> See Judgement, para.310.

<sup>430</sup> See Judgement, paras.89, 97-99, 111, 142, 150, 160, 310, 312, 473, fn.1902. Also RFJ-151:Exh.P00495, paras.81-83, 87, 90, 185-193 (confidential) cited at Judgement paras.150-151.

<sup>431</sup> See Judgement, paras.388, 405.

<sup>432</sup> See Judgement, paras.396, 399.

<sup>433</sup> See Judgement, para.97.

<sup>434</sup> RFJ-153:Exh.P00002, paras.114-115, 118-123 (confidential); RFJ-153:T.45 (14-Jun-2017); RFJ-153:T.65-72 (15-Jun-2017); RFJ-153:T.64-73 (20-Jun-2017) cited at Judgement, para.97.

<sup>435</sup> [REDACTED]; Exhs.P00347, pp.1-2; P00348, pp.1-3.

<sup>436</sup> See Judgement, para.578.

<sup>437</sup> See Judgement, para.473, fn.1902.

<sup>438</sup> [REDACTED]; [REDACTED].

<sup>439</sup> [REDACTED].

<sup>440</sup> Exh.P00321; [REDACTED]; M.Babić:Exh.P01248, pp.223-224 (T.1547-1548); [REDACTED].

<sup>441</sup> [REDACTED].

<sup>442</sup> Above para.183.

to August 1991,<sup>443</sup> must have witnessed first-hand the atmosphere of terror created in the area by the SAO-Krajina police. The only reasonable conclusion is that Stanišić and Simatović possessed the required *mens rea* for aiding and abetting murder, persecution and forcible displacement.

2. Stanišić aided and abetted crimes committed by the SAO-SBWS security forces, including the SAO-SBWS police and TO, in SAO-SBWS

188. The Chamber found that forcible displacement and persecution were committed in Slavonia, Baranja and Western Srem by the SAO-SBWS police and TO.<sup>444</sup> No reasonable trial chamber could have failed to find that Stanišić aided and abetted these crimes by (i) empowering Ilija Kojić and SerbianDB employee Radoslav Kostić to form the SAO-SBWS police; and (ii) providing the SAO-SBWS police and other security forces, including the SAO-SBWS TO, with weapons and equipment.

(a) Stanišić substantially contributed to the crimes committed by SAO-SBWS security forces, including the SAO-SBWS police and TO

(i) Stanišić empowered Kojić and SerbianDB employee Kostić to form the SAO-SBWS police

189. Based on the Chamber's findings and the underlying evidence, Stanišić substantially contributed<sup>445</sup> to the commission of forcible displacement and persecution by the SAO-SBWS police by empowering Kojić and SerbianDB employee Kostić<sup>446</sup> to form the SAO-SBWS police.<sup>447</sup>

190. The Chamber found that Kostić and Kojić were "among the key individuals involved in the formation and operations of the local police" in SAO-SBWS.<sup>448</sup> In discussing their roles in SAO-SBWS, the Chamber found that Stanišić and Simatović "may have exercised authority over them and directed them in their activities" within local security structures in SAO-SBWS,<sup>449</sup> but erred in finding that this was not the only reasonable inference.<sup>450</sup> No

<sup>443</sup> M.Babić:Exh.P01246, pp.251, 263-264 (T.13106, 13118-13119); [REDACTED]; M.Babić:Exh.P01248, p.105 (T.1429); [REDACTED]; RFJ-066:T.29 (10-Jul-2017); [REDACTED]; [REDACTED]; Exhs.P00247; P00211; P00843; C.Nielsen:T.45-46 (15-Nov-2017). *Also* Judgement, paras.26, 351.

<sup>444</sup> Judgement, paras.111-114, 119, 143, 145-146, 151.

<sup>445</sup> *See Popović* AJ, para.1758; *Šainović* AJ, para.1649; *Blaškić* AJ, para.46.

<sup>446</sup> *See* Judgement, paras.530-531.

<sup>447</sup> Judgement, para.525.

<sup>448</sup> Judgement, para.525.

<sup>449</sup> Judgement, para.531.

reasonable trial chamber could have found that any other inference is supported by the evidence.

191. To support the alternative inference—that Kostić and Kojić were not acting under the direction of Stanišić and Simatović—the Chamber highlighted the role that the SerbianJB played in organising and directing the local security structures.<sup>451</sup> However, the Chamber’s findings and the evidence it relied upon reflect that the SerbianJB was not involved in organising the SAO-SBWS police until late July 1991 at the earliest,<sup>452</sup> by which time Kostić and Kojić had already made substantial progress in establishing the SAO-SBWS police.<sup>453</sup> The Chamber accepted that Stanišić met in late June 1991 with SAO-SBWS police representatives “regarding the provision of assistance for the setup of the local police”, and that Stanišić directed them to Kostić and Kojić to meet their needs.<sup>454</sup>

192. Moreover, in light of the Chamber’s other findings, and discussion of evidence regarding Kostić, Kostić’s SAO-SBWS deployment to form the SAO-SBWS police could only have been pursuant to Stanišić’s instructions. The Chamber erred in finding otherwise.<sup>455</sup> The Chamber:

- Found that Kostić was employed by the SerbianDB continuously from December 1990 until November 1994;<sup>456</sup>
- Relied on the evidence that Kostić was involved with Stanišić and Simatović in the provision of weapons to the SAO-Krajina police in late 1990 and early 1991 to conclude that Stanišić and Simatović were involved in this arming;<sup>457</sup>
- Accepted that Kostić was then in SAO-SBWS in June 1991 for the initial meeting on forming the SAO-SBWS police, where Kojić introduced him as a SerbianDB official;<sup>458</sup> and

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<sup>450</sup> Judgement, paras.525, 530.

<sup>451</sup> Judgement, paras.521, 531.

<sup>452</sup> Judgement, para.521.

<sup>453</sup> Judgement, paras.521, 534, fn.2082.

<sup>454</sup> Judgement, para.534.

<sup>455</sup> Judgement, para.530.

<sup>456</sup> Judgement, para.530. *Also* Judgement paras.445, 499, fns.1780, 1994.

<sup>457</sup> *See* Judgement, paras.499, 501. *Also* D.Krsmanović:T.8-9 (1-Oct-2019).

<sup>458</sup> Judgement, para.521, fn.2082. *Also* [REDACTED].

- Acknowledged evidence that Stanišić signed the decision deploying Kostić to his assignment on 21 June 1991.<sup>459</sup>

193. The Chamber did not identify any evidence that Kostić was acting either independently or on the instructions of anyone other than Stanišić in organising the SAO-SBWS police in mid-1991. Kostić was employed by the SerbianDB and only the SerbianDB in 1991.<sup>460</sup>

194. Stanišić’s role in facilitating the establishment of the SAO-SBWS police through Kostić and Kojić enabled the SAO-SBWS police to commit the crimes and thus substantially contributed<sup>461</sup> to the perpetration of persecution and forcible displacement in SAO-SBWS.<sup>462</sup>

(ii) Stanišić provided SAO-SBWS security forces, including the SAO-SBWS police and TO, with weapons and equipment

195. Based on the Chamber’s findings and the evidence on record, Stanišić substantially contributed<sup>463</sup> to the commission of forcible displacement and persecution by SAO-SBWS security forces, including the SAO-SBWS police and TO, by providing them with weapons and equipment.

196. The Chamber accepted that Stanišić was “likely involved” in arming SAO-SBWS “security forces” in the first half of 1991,<sup>464</sup> playing a “similar role” to the role he played providing weapons to “the SAO-Krajina” during the same period.<sup>465</sup> In reaching this conclusion, the Chamber acknowledged evidence that:

- Milošević gave Stanišić and JCE-member Mihalj Kertes *carte blanche* in the distribution of weapons;<sup>466</sup>
- In June 1991 Stanišić instructed SAO-SBWS police representatives to go “through secret structures”—Kostić and Kojić—to obtain material support,<sup>467</sup> and the police,

<sup>459</sup> See Judgement, para.347, fn.1473 (the Chamber relied on Exh.P00522, p.21 (BCS) (corresponding to p.27 (Eng))—where Stanišić deployed Kostić on 21 June 1991—as evidence that Stanišić was “active and working during this period of time”).

<sup>460</sup> Kostić did not hold an official position within the Krajina MUP structures until his appointment as Assistant MUP Minister, which the Chamber found to be in late 1992 or early 1993: Judgement, para.524.

<sup>461</sup> See Popović AJ, para.1758; Šainović AJ, para.1649; Blaškić AJ, para.46.

<sup>462</sup> Judgement, paras.111-114, 119, 143, 145-146, 151, 156, 162, 168-170, 312, 316-318, 322-323, 325.

<sup>463</sup> See Popović AJ, para.1758; Šainović AJ, para.1649; Blaškić AJ, para.46.

<sup>464</sup> Judgement, para.536. Also Judgement, paras.533, 537.

<sup>465</sup> Judgement, para.534. Also Judgement, paras.498, 501, 504-505. See above para.179.

<sup>466</sup> Judgement para.533 citing Exh.1D00042, p.3; RFJ-113:T.80-82 (28-Sep-2017) (confidential).

thereafter, repeatedly collected weapons, vehicles and equipment from SMUP offices and depots;<sup>468</sup> and

- In September 1991, Stanišić himself declared that all the equipment necessary for operations had been provided to the SAO-SBWS police and that they should use it to their advantage.<sup>469</sup>

197. The Chamber also accepted that there were clear indications the SerbianDB provided assistance in connection with the arming of SAO-SBWS security forces in the first half of 1991 through secret channels, which involved Kertes, Kojić and Kostić.<sup>470</sup> The Chamber's findings and the record establish that Stanišić collaborated with Kertes,<sup>471</sup> Kojić,<sup>472</sup> and Kostić,<sup>473</sup> in addition to SerbianDB operative [REDACTED],<sup>474</sup> including with respect to supplying weapons and equipment to the SAO-SBWS, and to the SAO-SBWS police and TO in particular.

198. Having regard to the foregoing, no reasonable trial chamber could have failed to find that Stanišić provided weapons and equipment to SAO-SBWS security forces, including the SAO-SBWS police and TO. Stanišić's provision of weapons and equipment to the SAO-

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<sup>467</sup> Judgement, para.534 *citing* RFJ-113:Exh.P00562, paras.33, 40-43, 47 (confidential); RFJ-113:T.47 (26-Sep-2017) (confidential); RFJ-151:Exh.P00495, paras.63, 154 (confidential), Exh.P00496, para.8 (confidential). *Also* [REDACTED]; D.Anastasijević:Exh.P02423, para.81.

<sup>468</sup> Judgement, paras.534, 536 *and citations therein*. *Also* Judgement, para.522; [REDACTED].

<sup>469</sup> RFJ-113:Exh.P00562, para.88 (confidential); RFJ-113:T.57 (26-Sep-2017) *cited at* Judgement, para.536. *Also* RFJ-113:T.58 (26-Sep-2017).

<sup>470</sup> Judgement, para.536.

<sup>471</sup> Exh.1D00042, p.3; [REDACTED]; M.Deronjić:Exh.P01718, p.97 (T.957); B.Savić:T.48 (12-Sep-2017); Exh.P00482; D.Anastasijević:Exh.P02423, paras.38, 81, 150. *Also* [REDACTED]; Exh.P00485, pp.2-3, 6-7; [REDACTED]; [REDACTED]; Exh.P02445, p.90; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; M.Babić:Exh.P01246, pp.279, 281, 897 (T.13134, 13136, 13759); Exh.1D00060, p.1; A.Vasiljević:Exh.P02686, pp.1-2 (T.15885-15886); [REDACTED]; Exhs.1D00123, p.1; P02435; M.Babić:Exh.P01248, pp.204-205 (T.1528-1529); Exh.P00059 (Clip 1, 00:34:18-00:34:39), pp.9-10; Exh.P00256 (00:23:32-00:23:50), p.14. *See* Judgement, paras.503, 532-533, 535, fn.2010 *and citations therein*.

<sup>472</sup> [REDACTED]; [REDACTED]; [REDACTED]; B.Savić:Exh.P00449, paras.44-45, 47; B.Savić:T.11-12, 114-115 (14-Sep-2017); B.Bogunović:Exh.P02720, pp.17-21 (T.5982-5986); [REDACTED]. *Also* [REDACTED]; [REDACTED]. *See* Judgement, paras.521, 529, 531-532, 534.

<sup>473</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. *Also* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Exh.P00522, pp.32-33; D.Krsmanović:T.8-9 (1-Oct-2019); [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; 2D00144. *See* Judgement, paras.530-532, 534.

<sup>474</sup> *See* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. *See* Judgement, paras.531-532 *and evidence cited therein*.

SBWS police and TO enabled them to carry out the crimes and thus substantially contributed<sup>475</sup> to the perpetration of persecution and forcible displacement in SAO-SBWS.<sup>476</sup>

(b) Stanišić possessed the *mens rea* to aid and abet crimes committed by the SAO-SBWS security forces, including the SAO-SBWS police and TO

199. The Chamber's findings regarding Stanišić's comprehensive knowledge of events in Croatia and BiH from the spring of 1991, including the forcible displacement campaign targeting non-Serbs, detailed above<sup>477</sup> and further below, together with the evidence on the record, show that Stanišić (i) empowered Kojić and Kostić to form the SAO-SBWS police; and (ii) provided weapons and equipment to SAO-SBWS security forces, including the SAO-SBWS police and TO, with awareness of the probability that they would commit persecution and forcible displacement, and that his acts would assist in the commission of those crimes.<sup>478</sup>

200. The Chamber found that Stanišić monitored developments in SAO-SBWS from at least January 1991.<sup>479</sup> In particular, the record shows that Stanišić—who met with, and provided advice to, Hadžić prior to, and following, the official establishment of Serb government structures in SAO-SBWS in August 1991<sup>480</sup>—was aware of Hadžić's goal to unite all Serbian villages in one territorial unit and ultimately, to unite SAO-SBWS with Serbia.<sup>481</sup> Considering that many targeted areas in SAO-SBWS had a majority non-Serb population, this inevitably required the commission of violent crimes by SAO-SBWS security forces. Stanišić was aware that forcible displacements and persecution would probably occur, and that his provision of weapons and other equipment to the SAO-SBWS police and TO would support those crimes. Stanišić's anger at the SAO-SBWS police for failing to take over Vukovar in September 1991, and his direction that they should use the equipment provided "to their advantage"<sup>482</sup> is a clear indication of his *mens rea*. No reasonable trial chamber could have found that Stanišić did not possess the *mens rea* required for aiding and abetting persecution and forcible displacement committed by the SAO-SBWS police and TO in 1991.

<sup>475</sup> See Popović AJ, para.1758; Šainović AJ, para.1649; Blaškić AJ, para.46.

<sup>476</sup> Judgement, paras.111-114, 119, 143, 145-146, 151, 156, 162, 168-170, 312, 316-318, 322-323, 325. E.g. [REDACTED].

<sup>477</sup> Above paras.183-184.

<sup>478</sup> See Šainović AJ, para.1772; Simić AJ, para.86; Lukić AJ, paras.428,440; Haradinaj AJ, para.58.

<sup>479</sup> Judgement, para.513, citing e.g. Exhs.P00484 (confidential), P00485, 1D00819 (confidential), P00460 (confidential).

<sup>480</sup> Judgement, paras.510-511, 514, 516, 537.

<sup>481</sup> E.g. [REDACTED]; P00485, p.6; [REDACTED].

<sup>482</sup> RFJ-113:Exh.P00562, para.88 (confidential); RFJ-113:T.57 (26-Sep-2017) cited at Judgement, para.536. Also RFJ-113:T.58 (26-Sep-2017).

3. Stanišić and Simatović aided and abetted crimes committed by Unit members in SAO-SBWS and Doboј

201. The Chamber found that Serb forces committed persecution and forcible displacement in Bilje in early September 1991,<sup>483</sup> Western Srem in early October 1991,<sup>484</sup> and Doboј from May 1992, as well as murder in Doboј.<sup>485</sup> As discussed above, no reasonable trial chamber could have failed to find that Unit members were among the Serb forces who committed crimes in these locations.<sup>486</sup>

202. The Chamber also found that Stanišić and Simatović formed the Unit by August/September 1991 and that they exercised authority over it and determined its “use and deployment” from its establishment until at least mid-April 1992.<sup>487</sup> The Chamber further found that Stanišić and Simatović facilitated the Golubić training between May and July/August 1991 by providing SerbianDB affiliated trainers,<sup>488</sup> and that they were in control of the Ležimir and Pajzoš training camps until at least March/April 1992, where they directed, authorised, financed and logistically supported the training of Unit members and other units.<sup>489</sup>

203. In light of the Chamber’s findings and the evidence on the record, no reasonable trial chamber could have failed to find that Stanišić and Simatović aided and abetted the crimes Unit members committed during forcible displacement operations in Bilje, Western Srem and Doboј.

(a) Stanišić and Simatović substantially contributed to the Unit members’ crimes

204. Based on the Chamber’s findings and the evidence on the record, Stanišić and Simatović substantially contributed<sup>490</sup> to the commission by Unit members of persecution and forcible displacement in Bilje, Western Srem and Doboј as well as murder in Doboј.

205. Specifically, the Chamber’s findings and the record establish that after receiving training at Golubić and/or Ležimir, Unit members joined other Serb forces in the forcible

<sup>483</sup> Judgement, paras.150, 156, 312, 315-318, 322-325.

<sup>484</sup> Judgement, paras.162, 168, 312, 315-318, 322-325.

<sup>485</sup> Judgement, paras.242, 243, 244, 252, 301, 313-318, 322-325.

<sup>486</sup> *Above* paras.96-112, 117.

<sup>487</sup> Judgement, paras.388, 405.

<sup>488</sup> Judgement, paras.396-397, 399-400, 409, 435.

<sup>489</sup> Judgement, paras.406-407, 409.

<sup>490</sup> *See Popović* AJ, para.1758; *Šainović* AJ, para.1649; *Blaškić* AJ, para.46.



displacement operations in Bilje,<sup>491</sup> Western Srem<sup>492</sup> and Doboj,<sup>493</sup> in the course of which they committed crimes. For example:

- Živojin Ivanović, identified by the Chamber as the Unit’s “local commander”,<sup>494</sup> trained [REDACTED] at Golubić,<sup>495</sup> and thereafter participated in operations in SAO-Krajina, including the attack on Kijevo.<sup>496</sup> [REDACTED].<sup>497</sup> He participated in operations in SAO-SBWS, including in Baranja<sup>498</sup> and [REDACTED].<sup>499</sup>
- Božović—identified by the Chamber as Ivanović’s deputy<sup>500</sup>—[REDACTED].<sup>501</sup> [REDACTED], he was at Ležimir [REDACTED].<sup>502</sup> [REDACTED].<sup>503</sup> By November 1991, he was at Pajzoš<sup>504</sup> from where he later deployed to Doboj to command the establishment of the Ozren camp and lead Serb forces in forcible displacement operations in Doboj.<sup>505</sup>
- Subotić<sup>506</sup> trained at Golubić and thereafter participated in combat operations in SAO-Krajina.<sup>507</sup> [REDACTED].<sup>508</sup> [REDACTED]<sup>509</sup> [REDACTED] he deployed under Božović’s command to [REDACTED] and participate in the forcible displacement operations in Doboj.<sup>510</sup>
- Popović<sup>511</sup> trained at Golubić and later participated in all operations “in which the then special unit from the fortress participated”, including Bilje and Western Srem.<sup>512</sup> He

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<sup>491</sup> Above paras.61-68, 117.

<sup>492</sup> Above paras.96-102.

<sup>493</sup> Above paras.69-74, 117.

<sup>494</sup> Judgement, para.405.

<sup>495</sup> Judgement, fn.47; [REDACTED]. Also [REDACTED]; Exh.P00271, p.1; [REDACTED].

<sup>496</sup> Exh.P00260, p.29.

<sup>497</sup> [REDACTED]. Also [REDACTED]; [REDACTED].

<sup>498</sup> Exh.P00258, pp.12, 32.

<sup>499</sup> [REDACTED]; [REDACTED].

<sup>500</sup> Judgement, para.405.

<sup>501</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>502</sup> [REDACTED]. Also [REDACTED]; [REDACTED]; [REDACTED].

<sup>503</sup> [REDACTED].

<sup>504</sup> Exh.P00260, pp.23, 30, 32.

<sup>505</sup> See Judgement, paras.428-429.

<sup>506</sup> See Judgement, para.24, fn.47 (identifying Davor Subotić as Golubić-trained “future” Unit member). Also Judgement para.429, fn.1709 (identifying Davor Subotić as an “original” member of the Unit).

<sup>507</sup> [REDACTED]. Also [REDACTED]; [REDACTED].

<sup>508</sup> [REDACTED]; [REDACTED]. Also [REDACTED]; [REDACTED].

<sup>509</sup> [REDACTED].

<sup>510</sup> See Judgement, paras.428-429. Also Judgement, para.429, fn.1709.

<sup>511</sup> See Judgement, para.429, fn.1709 (identifying Milenko Popović as an “original” member of the Unit).

was at Pajzoš by December 1991, later deploying under Božović's command to establish the Ozren camp and participate in the forcible displacement operations in Doboj.<sup>513</sup>

- Pilipović trained at Golubić in June 1991.<sup>514</sup> He “participated in all the actions of the unit”, including “in the group for the liberation of Baranja (Bilje).”<sup>515</sup>
- Kovačević was at Ležimir by September 1991 where he received training.<sup>516</sup> He “participated in all of the Unit's operations,”<sup>517</sup> including in Bilje.<sup>518</sup>
- Dragan Oluić trained at Golubić in May 1991 and subsequently participated in combat operations in SAO-Krajina.<sup>519</sup> [REDACTED].<sup>520</sup> He participated in the Western Srem operations.<sup>521</sup>

206. Given the Chamber's findings that Stanišić and Simatović facilitated instruction at Golubić and that Ležimir and Pajzoš operated as camps under their authority and control,<sup>522</sup> Stanišić and Simatović must have facilitated, directed, authorised, financed, and logistically supported the training at these camps of Unit members who then deployed to forcible displacement operations in the course of which they committed crimes.

207. Equally, Stanišić and Simatović must have deployed Unit members to Bilje and Western Srem, considering they participated in the forcible displacement operations in those locations at the time when Stanišić and Simatović were found to exercise authority over the Unit and determine its use.<sup>523</sup> In addition, as discussed above,<sup>524</sup> no reasonable trial chamber could have failed to find that Stanišić and Simatović deployed Unit members to participate in the forcible displacement operations in Doboj.

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<sup>512</sup> Exh.P00500, pp.3, 4, 16.

<sup>513</sup> Judgement, paras.428-429. *Also* Judgement, para.429, fn.1709 *citing* Exhs.P00500, p.16; P00260, p.23.

<sup>514</sup> *See* Judgement, para.24, fn.47 (identifying Nikola Pilipović as Golubić-trained “future” Unit member).

<sup>515</sup> Exh.P00258, pp.12, 32. *Also* [REDACTED]; [REDACTED].

<sup>516</sup> [REDACTED]. *Also* [REDACTED]; [REDACTED]; Exh.P00264, pp.19-20; [REDACTED].

<sup>517</sup> Exh.P00264, pp.7, 13, 20.

<sup>518</sup> Exh.P00264, p.7.

<sup>519</sup> *See* Judgement, para.24, fn.47 (identifying Dragan Oluić as Golubić-trained “future” Unit member); Exh.P00261, p.5.

<sup>520</sup> [REDACTED]. *Also* [REDACTED]; [REDACTED].

<sup>521</sup> Exh.P00261, p.5; [REDACTED].

<sup>522</sup> *Above* para.209.

<sup>523</sup> *Above* para.202.

<sup>524</sup> *Above* paras.103-112.

208. By forming the Unit, and training and deploying its members, Stanišić and Simatović provided them with the structure, preparedness, resources and equipment necessary to participate in the operations in Bilje, Western Srem and Dobož. Stanišić and Simatović thus substantially contributed to persecution and forcible displacement in Bilje, Western Srem, and Dobož, as well as murder in Dobož.

(b) Stanišić and Simatović possessed the *mens rea* to aid and abet crimes committed by Unit members

209. The Chamber's findings regarding Stanišić's and Simatović's knowledge of events in Croatia and BiH from the spring of 1991, including the forcible displacement campaign targeting non-Serbs, detailed above,<sup>525</sup> and further below show that Stanišić and Simatović (i) trained (future) Unit members at Golubić and Ležimir; (ii) and deployed Unit members to forcible displacement operations in Bilje, Western Srem and Dobož with awareness of the probability that they would commit murder, persecution and forcible displacement, and that their acts would assist in the commission of those crimes.

210. Stanišić and Simatović were also aware that by training Unit members at Ležimir and deploying them to participate in forcible displacement operations in Dobož, they would probably assist the commission of further crimes. As the Chamber noted in relation to the crimes committed by Unit members in Bosanski Šamac,<sup>526</sup> which occurred shortly before and contemporaneously with the crimes in Dobož,<sup>527</sup> the Dobož crimes formed part of the systematic pattern of crimes—murder, persecution and forcible displacement—committed by Serb forces carrying out the objective of the CCP.<sup>528</sup> In addition, nearly one year before, Serb forces, including Unit members had systematically committed crimes against non-Serbs in SAO-Krajina and SAO-SBWS.<sup>529</sup> Given the extent to which Stanišić and Simatović were contemporaneously aware of these events on the ground, including crimes,<sup>530</sup> they were aware of the probability that their training of the Unit members whom they deployed to Dobož would assist in the commission of crimes.

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<sup>525</sup> *Above* paras.182-187.

<sup>526</sup> Judgement, para.606.

<sup>527</sup> Judgement, paras.218, 222-225, 229, 233-234, 242-248, 250, 252-253.

<sup>528</sup> *See* Judgement, paras. 293- 295, 299-302, 309-318, 322-325, 375, 379.

<sup>529</sup> Judgement, para.607. *Above* paras.61-68, 117, 96-102, 181.

<sup>530</sup> *See* Judgement, paras.586-588.

4. Stanišić and Simatović aided and abetted the SDG's crimes committed in Sanski Most in 1995

211. The Chamber found that murders, persecution and forcible displacement were committed in Sanski Most in 1995 by Serb forces, including SDG members.<sup>531</sup>

212. No reasonable trial chamber could have failed to find that by financing the SDG unit involved in the Sanski Most 1995 crimes, Stanišić and Simatović aided and abetted these crimes.

(a) Stanišić and Simatović substantially contributed to the crimes committed by the SDG

213. On the basis of the Chamber's findings and the evidence discussed above, no reasonable trier of fact could have failed to find that Stanišić and Simatović substantially contributed to the to the crimes the SDG committed in Sanski Most in 1995 by financing the SDG unit deployed there.<sup>532</sup> This had a substantial effect<sup>533</sup> on the SDG's commission of persecution, forcible displacement and murders in 1995.

(b) Stanišić and Simatović possessed the *mens rea* to aid and abet the crimes committed by the SDG

214. The Chamber's findings and the record show that Stanišić and Simatović provided this financing while aware of the probability that the SDG would commit murder, persecution and forcible displacement crimes, and that their financing would assist the commission of those crimes.<sup>534</sup> In addition to acknowledging Stanišić's and Simatović's comprehensive knowledge of events on the ground in Croatia and BiH, as detailed above,<sup>535</sup> the Chamber also found that during the Indictment period, Stanišić and Simatović were aware of the forcible displacement campaign targeting non-Serbs in BiH.<sup>536</sup> They were also aware of the shared intent of the JCE members—including the leader and founder of the SDG,<sup>537</sup> Arkan<sup>538</sup>—to forcibly and

<sup>531</sup> Judgement, paras.265-267, 275-278, 299-302, 309-318, 322-325.

<sup>532</sup> Above paras.88-94.

<sup>533</sup> See Popović AJ, para.1758; Šainović AJ, para.1649.

<sup>534</sup> See Šainović AJ, para.1772; Simić AJ, para.86; Lukić AJ, paras.428, 440; Haradinaj AJ, para.58.

<sup>535</sup> Above para.183.

<sup>536</sup> Judgement, para.589.

<sup>537</sup> E.g. Judgement, paras.271 (referring to Arkan and *his* Serbian Volunteer Guard) (emphasis added), 441 (Arkan founded the Serbian Volunteer Guard).

<sup>538</sup> Judgement, para.380.

permanently remove the majority of non-Serbs from large areas of BiH through the commission of murder, persecution and forcible displacement.<sup>539</sup>

215. In relation to Arkan and the SDG specifically, the Chamber accepted that evidence demonstrated that the SerbianDB had Arkan under surveillance and was aware of his illegal activity.<sup>540</sup> Evidence relied upon by the Chamber elsewhere in the Judgement shows that the SerbianDB:

- had been aware of Arkan's criminality from at least early 1991;<sup>541</sup> and
- received contemporaneous reports on the murders committed by SDG members in SAO-SBWS in 1991<sup>542</sup> as well as the rape, torture, and killings they committed in eastern BiH in 1992.<sup>543</sup>

216. As the Chamber noted, Arkan publicly admitted his responsibility for the October 1991 killings at the Dalj police station.<sup>544</sup> Evidence relied upon by the Chamber in this context shows that he not only made such an admission, but touted his own impunity.<sup>545</sup> Other evidence in the record demonstrates that such rhetoric was routine, as Arkan publicly promoted ethnic violence and incited hatred against non-Serbs.<sup>546</sup>

217. Despite knowing of the criminal propensities of Arkan and his SDG, as well as Arkan's criminal intent, Stanišić and Simatović financed SDG members throughout 1995, including those who committed crimes in Sanski Most.<sup>547</sup> No reasonable trier of fact could have failed to find that Stanišić and Simatović possessed the required *mens rea* for aiding and abetting their crimes.

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<sup>539</sup> See Judgement, para.594.

<sup>540</sup> Judgement, para.447. Other evidence in the record shows that this surveillance continued throughout the Indictment period: [REDACTED]; [REDACTED].

<sup>541</sup> Exh.P00020 [REDACTED] cited at Judgement, para.441, fn.1766.

<sup>542</sup> Exh.P01198, pp.1-3 cited at Judgement, para.124, fn.565; Exh.P00593 cited at Judgement, paras.120, 123, fns.535, 558.

<sup>543</sup> [REDACTED]; C.Nielsen:T.11 (15-Nov-2017) cited at Judgement, para.335, fn.1415; [REDACTED]; [REDACTED].

<sup>544</sup> Judgement, para.124.

<sup>545</sup> RFJ-111:Exh.P01174, p.16 (confidential) cited at Judgement, para.124, fns.565, 567.

<sup>546</sup> Exh.P03856, p.2; Exh.P02430 (02:02:58-02:09:35); D.Anastasijević:Exh.P02423, para.146; Exh.P00061; [REDACTED].

<sup>547</sup> Above paras.81-94.

## 5. Remedy

218. Based on the above, the Appeals Chamber should correct the Chamber's errors and find that Stanišić and Simatović substantially contributed to murder, persecution, deportation and forcible transfer in SAO-Krajina, SAO-SBWS and Sanski Most. It should further find that they acted with the requisite *mens rea* for aiding and abetting liability.

219. The Appeals Chamber should find Stanišić and Simatović guilty for aiding and abetting in relation to SAO-Krajina, SAO-SBWS, Dobož and Sanski Most under:

- Count 1: Persecution, Article 5(h) ICTY Statute;
- Count 2: Murder as a crime against humanity, Article 5(a) ICTY Statute;
- Count 3: Murder as a violation of the laws or customs of war, Article 3 ICTY Statute;
- Count 4: Deportation, Article 5(d) ICTY Statute; and
- Count 5: Other inhumane acts (forcible transfer), Article 5(i) ICTY Statute;

and increase their sentence them accordingly.

### **C. Sub-ground 2(C): The Chamber erred in law in excluding and/or not relying on relevant and probative evidence**

220. As set out in Sub-ground 1(C) above, the Chamber erred in prohibiting the Prosecution from introducing new evidence in the retrial. The Prosecution requests that the Appeals Chamber: (i) declare that the Chamber erred in law in imposing the Exclusionary Rule; and (ii) include evidence erroneously excluded by the Chamber that is admitted as additional evidence on appeal under IRMCT Rule 142.<sup>548</sup>

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<sup>548</sup> See Retrial Enforcement Decision, para.10.

#### IV. CONCLUSION

221. As set out above, the Chamber committed numerous errors of law and fact in its assessment of Stanišić's and Simatović's liability as members of a JCE and as aiders and abettors. When account is taken of the errors of fact, all reasonable doubt of Stanišić's and Simatović's guilt is eliminated.<sup>549</sup>

222. The Appeals Chamber should correct the errors the Chamber committed in relation to JCE liability as set out in Ground 1. Should the Appeals Chamber, however, not find Stanišić and Simatović guilty in relation to a certain crime under Ground 1 as members of a JCE, it should find them guilty under Ground 2 as aiders and abettors, to the extent those crimes are included in Ground 2. In its analysis, the Appeals Chamber should include evidence erroneously excluded by the Chamber that is admitted as additional evidence on appeal under IRMCT Rule 142.

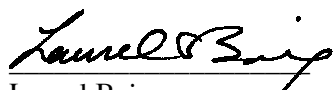
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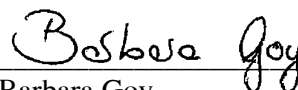
<sup>549</sup> See *Mladić* AJ, para.19.

**V. DECLARATION PURSUANT TO RULE 138(B)**

The Prosecutor will exercise due diligence to comply with his continuing Rule 73 disclosure obligations during the appeal stage of this case. As of the date of this filing, the Prosecutor has disclosed to Stanišić and Simatović all material under Rule 73(A) which has come into the Prosecutor's actual knowledge and, in addition, has made available to them collections of relevant material held by the Prosecutor.



Laurel Baig  
Senior Appeals Counsel



Barbara Goy  
Senior Appeals Counsel

Dated this 22<sup>nd</sup> day of November 2021  
At The Hague, The Netherlands



## VI. GLOSSARY

### List of Abbreviations and Authorities

Abbreviation used	Full citation
ABiH	Army of the Republic of Bosnia and Herzegovina
ARK	Autonomous Region of Krajina (in Bosnia and Herzegovina)
BiH	Bosnia and Herzegovina
CCP	Common criminal purpose
CSB	Security Services Centre
DB	State Security Department
Exh.	Exhibit
Exhs.	Exhibits
fn.	Footnote
fns.	Footnotes
FSUP	Federal Secretariat/Ministry of Internal Affairs (of SFRY or FRY)
ICTY Trial	<i>Prosecutor v. Stanišić and Simatović</i> , Case No.IT-03-69-T
JATD	Unit for Anti-Terrorist Activities (SMUP-DB)
JCE	Joint criminal enterprise
JNA	Yugoslav People's Army
MUP	Ministry of Internal Affairs
para.	paragraph
paras.	paragraphs
PJM/PJP	Special Police Unit (public security)
RS	Republika Srpska (also used as an acronym for the predecessor of Republika Srpska—the Republic of the Serbian People of Bosnia and Herzegovina)
RSK	Republic of Serbian Krajina
RS-MUP	Republika Srpska Ministry of Internal Affairs
RS-SNB	National Security Service of the RS-MUP (precursor to the RS-DB)
SAO	Serbian Autonomous Region

<b>Abbreviation used</b>	<b>Full citation</b>
SAO-Krajina	Serbian Autonomous Region of Krajina
SAO-Krajina TO	Territorial Defence of SAO Krajina
SAO-SBWS	Serbian Autonomous Region of Eastern Slavonia, Baranja and Western Srem
SAO-SBWS TO	Territorial Defence of SAO-SBWS
SDG	Serbian Volunteer Guard aka “ARKAN’s Tigers”, a paramilitary group led by Željko RAŽNATOVIĆ aka ARKAN
SerbianDB	State Security Service or Department of the SMUP
SerbianJB	Public Security Department (or Service) of the SMUP
SerbianTO	Territorial Defence of the Republic of Serbia
SMUP	Ministry/Secretariat of Internal Affairs of the Republic of Serbia
SNB	Serbian National Security (unless otherwise indicated, this refers to the SNB in SBWS)
SRS	Serbian Radical Party
TO	Territorial Defence
VJ	Army of the Federal Republic of Yugoslavia
VRS	Army of Republika Srpska

***Statutes and Rules of Procedure and Evidence***

<b>Abbreviation used</b>	<b>Full citation</b>
IRMCT Statute	Statute of the International Residual Mechanism for Criminal Tribunals established by the United Nations Security Council Resolution 1966, 22 December 2010
IRMCT Rule(s)	Rules of Procedure and Evidence, MICT/1/Rev.7, 4 December 2020
ICTY Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the United Nations Security Council Resolution 827, 25 May 1993

**MICT-15-96 authorities**

<b>Abbreviation used</b>	<b>Full citation</b>
19 September 2018 Evidence Decision	Decision on Prosecution First, Second, and Third Omnibus Motions for Admission of Evidence Pursuant to Rule 111, 19 September 2018
2 February Decision	Decision on Stanišić's Request for Stay of Proceedings, 2 February 2017
26 September 2018 Evidence Decision	Decision on Prosecution Fourth Omnibus Motion for Admission of Evidence Pursuant to Rule 111, 26 September 2018
Ahrens Evidence Decision	Decision on Prosecution Motion for Admission of Evidence of Ambassador Geert Ahrens Pursuant to Rule 111, 12 June 2017
Ahrens Evidence Motion	Prosecution Motion for Admission of Evidence of Ambassador Geert Ahrens Pursuant to Rule 111 (Public with Confidential Annexes A and B), 10 April, 2017
Corrigendum to Decision on Prosecution Bar Table Motion (Bosnia)	Corrigendum to Decision on OTP Motion for Admission of Documents from the Bar Table Bonsia, 15 February 2019
[REDACTED]	[REDACTED]
Decision on Prosecution Bar Table Motion (Croatia)	Decision on Prosecution Motion for Admission of Documents from the Bar Table (Croatia), 11 February 2019
Decision on Prosecution Bar Table Motion (Documents and Videos)	Decision on Prosecution Motion for Admission of Documents and Videos from the Bar Table, 11 February 2019
[REDACTED]	[REDACTED]
2 October 2018 Certification Decision	Decision on Prosecution Request for Certification to Appeal Decision on Prosecution's First, Second and Third Omnibus Motions for Admission of Evidence Pursuant to Rule 111, 2 October 2018
1 March 2017 Certification Decision	Decision on Requests for Certification to Appeal Decision on Stanisic's Request for Stay of Proceedings, 1 March, 2017
26 September 2018 Certification Decision	Decision on Prosecution Consolidated Request for Certification to Appeal Decision on Prosecution Motion for Admission of Evidence of RFJ-040 and RFJ-104 Pursuant to Rule 111, 26 September 2018
Indictment	Case No.IT-03-69-PT, Prosecution Notice of Filing of Third Amended Indictment, 10 July 2008
Jerneić Evidence Decision	Decision on Prosecution Motion for Admission of Evidence of Juraj Jerneić Pursuant to Rule 111, 13 July 2017
Judgement	Judgement, 30 June 2021 (written Judgement filed on 6

<b>Abbreviation used</b>	<b>Full citation</b>
	August 2021)
[REDACTED]	[REDACTED]
Laber Evidence Decision	Decision on Prosecution Motions for Admission of Jeri Laber's Evidence Pursuant to Rule 111 and for Testimony via Video-Conference Link, 1 June 2017
Prosecution-FTB	Prosecution Final Trial Brief, 12 March 2021 [public redacted version]
Prosecution-PTB	Prosecution Pre-Trial Brief, 5 September 2016 [public redacted version]
Retrial Enforcement Decision	Decision on Prosecution Motion for Enforcement of Order for Retrial, 14 December 2018
Revised Prosecution Rule 70(E) Filings	Prosecution Notice of Rule 70(E) Filings Pursuant to the Trial Chamber's Decision of 2 February 2017 (Public, with Confidential Annexes A, B, and D, [REDACTED], 9 March 2017
RFJ-013 Evidence Decision	Decision on Motion for the Admission of Evidence of RFJ-013 Pursuant to Rule 111, 12 June 2017
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
RFJ-070 Evidence Decision	Decision on Prosecution Motion for the Admission of Evidence of RFJ-070 Pursuant to Rule 111, 31 January 2018
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Rule 70 Prosecution Motion	Prosecution Notice of Rule 70(E) Filings, 5 September 2016 (public with confidential annexes A, B, and E [REDACTED])
[REDACTED]	[REDACTED]
Rule 112 Evidence Decision	Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 112, 22 February 2018
5 November 2018 Certification Decision	Decision on Prosecution Request for Certification to Appeal Decision on Prosecution's Fourth Omnibus Motion for Admission of Evidence Pursuant to Rule 111, 5 November, 2018
16 May 2018 Decision	Decision on Prosecution Request for Certification to Appeal Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 112, 16 May 2018
Trial Modalities Decision	Decision on Modalities for Trial, 13 April 2017
[REDACTED]	[REDACTED]

**IRMCT authorities**

<b>Abbreviation used</b>	<b>Full citation</b>
<i>Mladić</i> AJ	<i>Prosecutor v. Ratko Mladić</i> , Case No. MICT-13-56-A, App.Ch., Judgement, 8 June 2021

**ICTY authorities**

<b>Abbreviation used</b>	<b>Full citation</b>
<i>Blagojević</i> AJ	<i>Prosecutor v. Vidoje Blagojević &amp; Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Brdanin</i> AJ	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007
<i>Đorđević</i> AJ	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-A, App.Ch., Judgement, 27 January 2014
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Galić</i> Decision	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-AR73, 14 December 2001
<i>Halilović</i> AJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, App.Ch., Judgement, 16 October 2007
<i>Haradinaj</i> AJ	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj &amp; Lahi Brahimaj</i> , Case No. IT-04-84-A, App.Ch., Judgement, 19 July 2010
<i>Haradinaj</i> Retrial Decision	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj &amp; Lahi Brahimaj</i> , Case No. IT-04-84bis-AR73.1, App.Ch., Decision on Haradinaj's Appeal on Scope of Partial Retrial, 31 May 2011
<i>Krajišnik</i> AJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, App.Ch., Judgement, 17 March 2009
<i>Krnojelac</i> AJ	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, App.Ch., Judgement, 17 September 2003
<i>Kvočka</i> TJ	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić &amp; Dragoljub Prcać</i> , Case No. IT-98-30/1-T, T.Ch., Judgement, 2 November 2001
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić &amp; Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Lukić</i> AJ	<i>Prosecutor v. Milan Lukić &amp; Sredoje Lukić</i> , Case No. IT-98-32/1-A, App.Ch., Judgement, 4 December 2012

<b>Abbreviation used</b>	<b>Full citation</b>
<i>Martić</i> AJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, App.Ch., Judgement, 8 October 2008
<i>Milošević</i> AJ	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, App.Ch., Judgement, 12 November 2009
<i>Mrkšić</i> AJ	<i>Prosecutor v. Mile Mrkšić &amp; Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009
<i>Popović</i> AJ	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero &amp; Vinko Pandurević</i> , Case No. IT-05-88-A, App.Ch., Judgement, 30 January 2015
<i>Prlić</i> AJ	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić &amp; Berislav Pušić</i> , Case No. IT-04-74-A, App.Ch., Judgement, 29 November 2017
<i>Šainović</i> AJ	<i>Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević &amp; Sreten Lukić</i> , Case No. IT-05-87-A, App.Ch., Judgement, 23 January 2014
<i>Simić</i> AJ	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006
<i>Stakić</i> AJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch., Judgement, 22 March 2006
<i>Stakić</i> TJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24,T.Ch., Judgement, 31 July 2003
<i>Stanišić &amp; Simatović</i> AJ	<i>Prosecutor v. Jovica Stanišić &amp; Franko Simatović</i> , Case No. IT-03-69-A, App.Ch., Judgement, 9 December 2015
[REDACTED]	[REDACTED]
<i>Stanišić &amp; Simatović</i> Prosecution Updated Witness List	<i>Prosecutor v. Jovica Stanišić &amp; Franko Simatović</i> , Case No. IT-03-69-T, Prosecution Updated Witness List, 13 November 2009
[REDACTED]	[REDACTED]
<i>Stanišić &amp; Župljanin</i> AJ	<i>Prosecutor v. Mićo Stanišić &amp; Stojan Župljanin</i> , Case No. IT-08-91-A, App.Ch., Judgement, 30 June 2016
<i>Stanišić &amp; Župljanin</i> TJ	<i>Prosecutor v. Mićo Stanišić &amp; Stojan Župljanin</i> , Case No. IT-08-91-T, T.Ch., Judgement, 27 March 2013
<i>Tolimir</i> AJ	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-A, App.Ch., Judgement, 8 April 2015
<i>Tolimir</i> TJ	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-T, T.Ch., Judgement, 12 December 2012

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<b>Abbreviation used</b>	<b>Full citation</b>
<i>Bikindi</i> AJ	<i>Simon Bikindi v. Prosecutor</i> , Case No. ICTR-01-72-A, App.Ch., Judgement, 18 March 2010
<i>Bizimungu</i> AJ	<i>Augustin Bizimungu v. Prosecutor</i> , Case No. ICTR-00-56B-A, Judgement, 30 June 2014
<i>Gacumbitsi</i> AJ	<i>Sylvestre Gacumbitsi v. Prosecutor</i> , Case No. ICTR-2001-64-A, App.Ch., Judgement, 7 July 2006
<i>Karemera</i> AJ	<i>Édouard Karemera &amp; Matthieu Ngirumpatse v. Prosecutor</i> , Case No. ICTR-98-44-A, App.Ch., Judgement, 29 September 2014
<i>Muvunyi</i> Retrial Decision	<i>Prosecutor v. Tharcisse Muvunyi</i> , Case No. ICTR-2000-55A-AR73, App.Ch., Decision on the Prosecutor's Appeal Concerning the Scope of Evidence to be Adduced in the Retrial, 24 March 2009
<i>Nchamihigo</i> AJ	<i>Siméon Nchamihigo v. Prosecutor</i> , Case No. ICTR-2001-63-A, App.Ch., Judgement, 18 March 2010
<i>Ndindiliyimana</i> AJ	<i>Prosecutor v. Augustin Ndindiliyimana, François-Xavier Nzuwonemeye, &amp; Innocent Sagahutu</i> , Case No. ICTR-00-56-A, App.Ch., Judgement, 11 February 2014
<i>Rutaganda</i> AJ	<i>Georges Anderson Nderubumwe Rutaganda v. Prosecutor</i> , Case No. ICTR-96-3-A, App.Ch., Judgement, 26 May 2003



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