

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

**Case No. IT-08-91-A**

**IN THE APPEALS CHAMBER**

**Before:** Judge Carmel Agius, Presiding Judge  
Judge Willamm H. Sekule  
Judge Patrick Robinson  
Judge Liu Daqun  
Judge Arlette Ramaroson

**Registrar:** Mr. John Hocking

**Date Filed:** 23 April 2014

**THE PROSECUTOR**

**v.**

**MİĆO STANIŠIĆ**

**and**

**STOJAN ŽUPLJANIN**

***PUBLIC***

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**AMENDED NOTICE OF APPEAL ON BEHALF OF MİĆO STANIŠIĆ**

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**The Office of the Prosecutor:**

**Ms. Laurel Baig**

**Counsel for the Defence:**

**Mr. Slobodan Zečević and Mr. Stéphane Bourgon for Mićo Stanišić**

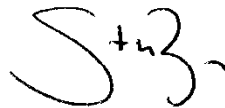
**Mr. Dragan Krgović, Ms. Tatjana Čmerić and Mr. Christopher Gosnell for Stojan Župljanin**

**AMENDED NOTICE OF APPEAL ON BEHALF OF MIĆO STANIŠIĆ**

1. Pursuant to the Appeals Chamber's "Decision on Mićo Stanišić's Motion Seeking Leave to Amend Notice of Appeal" of 14 April 2014, Mr. Stanišić files his amended Notice of Appeal attached as Annex A.

**RESPECTFULLY SUBMITTED ON THIS 23<sup>RD</sup> DAY OF APRIL 2014****COUNSEL FOR MR. STANIŠIĆ**

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**Slobodan Zečević**

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**Stéphane Bourgon**

## **ANNEX A**

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### **AMENDED NOTICE OF APPEAL ON BEHALF OF MIĆO STANIŠIĆ**

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## **INTRODUCTION**

1. The Appellant hereby serves notice of appeal of the Judgement pursuant to Rule 108.

## **PROCEDURAL BACKGROUND**

2. The initial Indictment against Mr. Stanišić was confirmed, confidentially, on 25 February 2005.
3. Upon the confidentiality of the Indictment being lifted on 10 March 2005, Mr. Stanišić immediately surrendered voluntarily into the custody of the International Tribunal.
4. On 14 March 2005, Mr. Stanišić pleaded not guilty to all counts in the Indictment.
5. Before the beginning of trial proceedings, Mr. Stanišić consented to the Prosecution's request for an interview pursuant to Rules 42, 43 and 63. The Prosecution conducted this interview from 16 to 21 July 2007. The transcript of the interview, which was admitted in evidence as Exhibits P2300 to P2313, was central to the adjudication of the charges laid against Mr. Stanišić.
6. Mr. Stanišić was tried jointly with Mr. Stojan Župljanin pursuant to the Prosecution's Second Amended Consolidated Indictment, dated 23 November 2009.
7. The trial commenced on 14 September 2009 and ended with the presentation of the Parties' closing arguments from 29 May to 01 June 2011.
8. On 27 March 2013, the Trial Chamber delivered its Judgement.
9. Mr. Stanišić was found guilty of Counts 1, 4 and 6 pursuant to the joint criminal enterprise, categories 1 and 3, mode of liability.
10. Mr. Stanišić was acquitted on Count 2, extermination, as a crime against humanity.

11. On the basis of the principles relating to cumulative convictions, the Trial Chamber did not enter convictions for Counts 3, 5, 7, 8, 9 and 10.
12. Mr. Stanišić is appealing every finding of guilt returned by the Trial Chamber as well as those findings where he was found responsible without a conviction being entered.
13. The Trial Chamber imposed on Mr. Stanišić a sentence of 22 years' imprisonment, which is also the subject of this appeal on the basis of its manifestly unreasonable character.
14. On 5 April 2013, Mr. Stanišić, along with Stojan Župljanin, submitted a joint motion seeking an extension of 30 days for the submission, if any, of their respective notices of appeal. This joint motion was not opposed by the Prosecution.
15. On 8 April 2013, the President issued the "Order Assigning Judges to a Case Before the Appeals Chamber" appointing himself along with Judges Agius, Robinson, Liu and Ramaroson to adjudicate this appeal.
16. On 13 April 2013, Judge Meron, in his capacity as Pre-Appeal Judge, granted in part the "Joint Defence Motion Seeking an Extension of Time to File Notice of Appeal", authorizing an extension of 15 days for the filing of this Stanišić Notice of Appeal.

**RIGHT OF MR. STANISIC TO BE TRIED IN A LANGUAGE WHICH HE UNDERSTANDS**

17. Mr. Stanišić neither speaks nor understands English and has not yet been provided a copy of the Judgement in a language which he understands.
18. Accordingly, this Mr. Stanišić hereby reserves the right to seek leave to amend his notice of appeal after he has had an opportunity to read and analyse the Judgement in his own language.

## **GROUND OF APPEAL**

19. This Stanišić Notice of Appeal raises 16 Grounds of appeal, including 6 Sub-Grounds of appeal, as follows:

### **I. Ground of Appeal (1) – Error Invalidating the Judgement as a Whole**

#### ***1bis* Ground of Appeal**

20. The Trial Chamber erred in law by violating Mr. Stanišić's right to a fair hearing by an independent and impartial tribunal. Statements made by a Judge of the Trial Chamber in the aftermath of the Judgement, which were contained in a letter published by the Danish newspaper BT, demonstrate that Mr. Stanišić was not tried fairly by an independent and impartial tribunal.
21. The Trial Chamber's error of law invalidates the Judgement.
22. Relief sought: As a result of the Trial Chamber's error of law, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) hold that Mr. Stanišić's right to be tried fairly by an independent and impartial tribunal was violated; and (ii) order that Mr. Stanišić be tried *de novo* before a new Trial Chamber; or in the alternative, (iii) quash the guilty findings entered for counts 1, 4 and 6 of the Indictment; and (iv) return a finding of NOT GUILTY for all counts in the Indictment.

#### **1<sup>st</sup> Ground of Appeal**

23. The Trial Chamber erred in law by failing to provide a reasoned opinion in support of its findings in relation to the common plan it found to have existed,<sup>1</sup> that: (i) Mr. Stanišić possessed the required *mens rea*;<sup>2</sup> (ii) committed the necessary *actus reus*;<sup>3</sup> and (iii) the possibility that all of the other crimes (except extermination, Count 2),

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<sup>1</sup> Judgement, Volume 2 of 3, para. 313.

<sup>2</sup> Judgement, Volume 2 of 3, paras. 766-769.

<sup>3</sup> Judgement, Volume 2 of 3, paras. 729-765.

could be committed in the execution of the common plan, was sufficiently substantial as to be foreseeable to Mr. Stanišić and that he willingly took that risk.<sup>4</sup>

24. The Trial Chamber's error invalidates the Judgement as a whole.
25. Relief sought: As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) quash the above findings; and (ii) assess his individual responsibility *de novo* on the basis of the evidence adduced at trial. In the alternative, Mr. Stanišić requests the Appeals Chamber to order a trial *de novo*.

## II. Ground of Appeal (2) – Error Related to Joint Criminal Enterprise Liability

### 2<sup>nd</sup> Ground of Appeal

26. The Trial Chamber committed a mixed error of law and fact by impermissibly identifying the collective “Bosnian Serb leadership” as participants in the common plan it found to have existed.<sup>5</sup> Considering the Trial Chamber's characterisation of the “Bosnian Serb leadership”,<sup>6</sup> this amounted to a violation of Mr. Stanišić's right to be presumed innocent as well as to the imposition of collective rather than individual criminal responsibility.
27. The Trial Chamber's error invalidates the Judgement and occasioned a miscarriage of justice.
28. Relief Sought: As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeal Chamber to (i) quash its finding that the “Bosnian Serb leadership” were collectively members of the common plan; and (ii) assess *de novo* on the basis of the evidence admitted at trial, whether Mr. Stanišić committed the required *actus reus* and possessed the necessary *mens rea* and thus whether he was a member of the common plan the Trial Chamber found to have existed.

<sup>4</sup> Judgement, Volume 2 of 3, paras. 770-774, 776-779, 781, 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885.

<sup>5</sup> Judgement, Volume 2 of 3, paras. 309-313.

<sup>6</sup> Judgement, Volume 2 of 3, para. 131; see *also* e.g. paras. 719 and 755.

### III. Grounds of Appeal (3-4) – Errors Related to Mico Stanišić’s *mens rea*

#### 3<sup>rd</sup> Ground of appeal

29. The Trial Chamber committed an error of law by conflating its finding regarding the aim of the “Bosnian Serb leadership” as of 1991, *i.e.* “for Serbs to live in one state with other Serbs in the former Yugoslavia”<sup>7</sup> and the required *mens rea* for joint criminal enterprise category 1, *ie.* “that the accused voluntarily participated in at least one aspect of the common purpose and that the accused shared with the other joint criminal enterprise members, the intent to commit the crime(s)” included in the criminal object of the enterprise”.<sup>8</sup>
30. The Trial Chamber’s error invalidates the Judgement.
31. Relief Sought: As a result of the Trial Chamber’s error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) hold that the Trial Chamber erred in law when identifying the required *mens rea* for the common plan it found to have existed; (ii) hold that Mr. Stanišić did not possess the required *mens rea* for this common plan; (iii) return a finding of NOT GUILTY for Counts 1, 4 and 6 of the Indictment; and (iv) return a finding that Mr. Stanišić was not responsible for the crimes covered by Counts 3, 5, 7, 8, 9 and 10.

#### 4<sup>th</sup> Ground of Appeal

32. The Trial Chamber committed a mixed error of law and fact when finding that “(...) the only reasonable inference is that Stanišić was aware of the persecutorial intentions of the *Bosnian Serb leadership* to forcibly transfer and deport Muslims and Croats from territories of BiH and that Stanišić shared the same intent”.<sup>9</sup>

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<sup>7</sup> Judgement, Volume 2 of 3, para. 309.

<sup>8</sup> Judgement, Volume 1 of 3, para. 105.

<sup>9</sup> Judgement, Volume 2 of 3, para. 769 (emphasis added).



33. The Trial Chamber's error arises *inter alia*, from numerous erroneous findings considered either individually or collectively and the application of an incorrect standard regarding the *mens rea* required for JCE I.<sup>10</sup>
34. Having properly assessed the totality of the evidence, no reasonable trial chamber could have adopted this finding, beyond a reasonable doubt, and thus found that Mr. Stanišić possessed the required *mens rea* for the common plan the Trial Chamber found to have existed.<sup>11</sup>
35. The Trial Chamber's error invalidates the Judgement and occasioned a miscarriage of justice.
36. Relief Sought: As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) quash the Trial Chamber's finding; (ii) hold that Mr. Stanišić did not possess the required *mens rea* for the common plan it found to have existed; (iii) return a finding of NOT GUILTY for Counts 1, 4 and 6 of the Indictment; and (iv) return a finding that Mr. Stanišić was not responsible for the crimes covered by Counts 3, 5, 7, 8, 9 and 10.

#### **IV. Grounds of Appeal (5-6) – Errors Related to Mićo Stanišić's *actus reus***

##### **5<sup>th</sup> Ground of Appeal**

37. The Trial Chamber erred in law by failing to: (i) set out the law in relation to joint criminal enterprise liability by omission;<sup>12</sup> and (ii) identify Mr. Stanišić's culpable omissions, which were mandated by criminal law, whether domestic or international.<sup>13</sup>
38. The Trial Chamber's error invalidates the Judgement.

<sup>10</sup> See *inter alia*, Judgement, Volume 2 of 3, paras. 188-206; 242; 257; 342; 563; 565; 555-556; 576; 578-580; 599; 600; 603; 657-668; 690; 692; 711, 723; 724; 728; 729; 730-732 734; 736; 740; 742-745; 756; 757; 758; 764; 766-769; 807; 808; 826; 827; 830; 831; 836; 839; 840; 843; 844; 848; 849; 853; 854; 857; 858; 862; 863; 867; 868; 872; 873; 876; 877; 880; 881; 884; and 885.

<sup>11</sup> Judgement, Volume 2 of 3, para.313.

<sup>12</sup> Judgement, Volume 1 of 3, paras. 99-106.

<sup>13</sup> Judgement, Volume 2 or 3, paras. 745, 746, 751, 753, 754, 757, 759 and 761.

39. Relief Sought: As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) hold that the Trial Chamber erred in law in relation to joint criminal enterprise liability by omission; (ii) quash the Trial Chamber's implicit findings that Mr. Stanišić contributed to and thus was a member of the common plan it found to have existed; (iii) hold that Mr. Stanišić did not commit the necessary *actus reus*; (iv) return a finding of NOT GUILTY for Counts 1, 4 and 6; and (v) hold that Mr. Stanišić is not responsible for Counts 3, 5, 7, 8, 9 and 10.

### 6<sup>th</sup> Ground of Appeal

40. The Trial Chamber committed a mixed error of law and fact by: (i) failing to make explicit findings as to whether Mr. Stanišić contributed to the common plan it found to have existed and whether he was a member of this common plan;<sup>14</sup> and (ii) finding implicitly that Mr. Stanišić contributed to the common plan it found to have existed and thus was a member of this common plan.<sup>15</sup>
41. The Trial Chamber's error arises *inter alia*, from numerous erroneous findings considered either individually or collectively.<sup>16</sup>
42. Having properly assessed the totality of the evidence, no reasonable trial chamber could have concluded beyond a reasonable doubt that Mr. Stanišić contributed to the common plan it found to have existed and was a member thereof.
43. The Trial Chamber's failure to make express findings regarding Mr. Stanišić's contribution to, and membership in, the common plan it found to have existed invalidates the Judgement. The Trial Chamber's error of fact occasioned a miscarriage of justice.

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<sup>14</sup> Judgement, Volume 2 of 3, paras.729-765.

<sup>15</sup> *Ibid*, note 6.

<sup>16</sup> See *inter alia*, Judgement, Volume 2 of 3, paras. 37-43; 44; 57-58; 93; 102; 143; 257; 342; 555; 564; 567-568; 576; 578-580; 587; 592; 596; 599; 600; 603; 611-612; 614; 690; 695; 700; 706; 710; 711; 715-716; 723; 724; 728-736; 738; 739-743; 744-746; 751; 753-755; 757; 758-760; 761-762; 764; 806; 809; 811; 816; 820; 825; 826; 827; 829; 830; 831; 834; 838; 842;847; 852; 856; 861; 866; 871; 875; 879; and 883.

44. Relief Sought: As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) hold that the Trial Chamber erred in law by failing to make explicit findings as to whether Mr. Stanišić contributed to the common plan it found to have existed and whether he was a member of this common plan; (ii) quash the Trial Chamber's implicit finding that Mr. Stanišić contributed to and thus was a member of the common plan it found to have existed; (iii) hold that Mr. Stanišić did not commit the required *actus reus* for this common plan; (iv) return a finding of NOT GUILTY for Counts 1, 4 and 6 of the Indictment; and (v) return a finding that Mr. Stanišić was not responsible for the crimes covered by Counts 3, 5, 7, 8, 9 and 10.

**V. Ground of Appeal (7) – Error Related to Evidence Central to the Defence Case**

**7<sup>th</sup> Ground of Appeal**

45. The Trial Chamber committed a mixed error of law and fact and abused its discretion by failing to properly evaluate and accord the appropriate probative value to Mr. Stanišić's interview provided to the Prosecution voluntarily, before the beginning of trial proceedings.<sup>17</sup>
46. Having properly assessed the interview conducted by the Prosecution with Mr. Stanišić in light of totality of the evidence and the particular circumstances of this case, no reasonable trial chamber could have found beyond a reasonable doubt that Mr. Stanišić possessed the required *mens rea* and/or committed the necessary *actus reus* and thus that he was a member of the common plan the Trial Chamber found to have existed.<sup>18</sup>
47. The Trial Chamber's error invalidates the Judgement and occasioned a miscarriage of justice.

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<sup>17</sup> Exhibits P2300 to P2313; see *inter alia*, Judgement, Volume 2 of 3, paras. 341, 555, 559, 562, 564, 576, 581, 588, 595, 609, 616-618, 620, 624-625, 629, 633, 637, 656, 677-678, 693 and 708.

<sup>18</sup> Judgement, Volume 2 of 3, para.313.

48. Relief Sought: As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) assess *de novo* the appropriate probative value to be attributed to Exhibits P2300 to P2313; (ii) quash the Trial Chamber's finding that Mr. Stanišić possessed the required *mens rea*;<sup>19</sup> (iii) quash the Trial Chamber's implicit finding that he committed the required *actus reus*<sup>20</sup> and that he was a member of the common plan it found to have existed;<sup>21</sup> (iv) hold that Mr. Stanišić did not possess the required *mens rea*, did not commit the necessary *actus reus* and thus was not a member of the common plan it found to have existed; (v) return a finding of NOT GUILTY for Counts 1, 4 and 6 of the Indictment; and (vi) return a finding that Mr. Stanišić was not responsible for the crimes covered by Counts 3, 5, 7, 8, 9 and 10.

**VI. Grounds of Appeal (8-11) – Errors Related to Mićo Stanišić's Liability Pursuant to JCE III**

**8<sup>th</sup> Ground of Appeal**

49. The Trial Chamber erred in law by entering convictions pursuant to the joint criminal enterprise, category 3, mode of liability for the persecutory acts under Count 1,<sup>22</sup> which require proof of specific intent.<sup>23</sup>
50. The Trial Chamber's error invalidates the Judgement in respect of all underlying persecutory crimes in Count 1 other than for inhumane acts (forcible transfer) and deportation.
51. Relief Sought: As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) quash all findings of guilt and return a verdict of NOT GUILTY for all persecutory acts for which he was found guilty under Count 1 pursuant to the joint criminal enterprise, category 3, mode of liability; (ii) quash the sentence of 22 years' imprisonment imposed by the Trial Chamber; and (iii) impose a new and appropriate, lower sentence.

<sup>19</sup> Judgement, Volume 2 of 3, para.769.

<sup>20</sup> Judgement, Volume 2 of 3, paras. 729-765.

<sup>21</sup> *Idem*.

<sup>22</sup> Judgement, Volume 2 of 3, para. 955.

<sup>23</sup> Judgement, Volume 2 of 3, paras. 772-774 and 776-779.

## 9<sup>th</sup> Ground of Appeal

52. The Trial Chamber erred in law by failing to enter specific findings that the possibility that: (i) murder as a crime against humanity (Count 3); (ii) murder as a violation of the laws or customs of war (Count 4); (iii) torture as a crime against humanity (Count 5); (iv) torture as a violation of the laws or customs of war (Count 6); (v) cruel treatment as a violation of the laws or customs of war (Count 7); and (vi) inhumane acts as a crime against humanity (Count 8) could be committed in the execution of the common plan, were sufficiently substantial as to be foreseeable to Mr. Stanišić and that he willingly took that risk;<sup>24</sup>
53. The Trial Chamber's error invalidates the Judgement. In the absence of such findings, the Trial Chamber could not hold Mr. Stanišić responsible for Counts 3, 4, 5, 6, 7 or 8 pursuant to the joint criminal enterprise, category 3, mode of liability.
54. Relief Sought: As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) quash all findings that he is responsible for Counts 3, 4, 5, 6, 7, or 8 of the Indictment pursuant to the joint criminal enterprise, category 3, mode of liability;<sup>25</sup> and (ii) hold that Mr. Stanišić is not responsible for the crimes included in Counts 3-8.

## 10<sup>th</sup> Ground of Appeal

55. The Trial Chamber committed an error of fact by implicitly finding that the possibility that Counts 3, 4, 5, 6, 7 and 8 could be committed in the execution of the common plan, was sufficiently substantial as to be foreseeable to Mr. Stanišić and that he willingly took that risk.<sup>26</sup>

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<sup>24</sup> Judgement, Volume 2 of 3, paras. 770-774 and 776-779.

<sup>25</sup> Judgement, Volume 2 of 3, paras. 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885

<sup>26</sup> Judgement, Volume 2 of 3, paras. 774, 776, 779, 804, 813, 818, 822, 831, 836, 844, 849, 854, 858, 863, 868, 873, 877, 881 and 885.

56. Having properly assessed the totality of the evidence, no reasonable trial chamber could have found that the possibility Counts 3, 4, 5, 6, 7 and 8 could be committed in the execution of the common plan, was sufficiently substantial as to be foreseeable to Mr. Stanišić and that he willingly took that risk.
57. The Trial Chamber's error occasioned a miscarriage of justice.
58. As a result of the Trial Chamber's error, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) quash the Trial Chamber's implicit findings, pursuant to the joint criminal enterprise, category 3, mode of liability, for Counts 3, 4, 5, 6, 7, and 8; (ii) return a finding of NOT GUILTY for Counts 4 and 6 of the Indictment and quash the findings of responsibility for Counts 3, 5, 7 and 8; (iii) quash the sentence of 22 years' imprisonment imposed by the Trial Chamber; and (iv) impose a new and appropriate, lower sentence.

### 11<sup>th</sup> Ground of Appeal

59. The Trial Chamber committed errors of fact when finding that the possibility that all of the underlying crimes included in Count 1 – other than inhumane acts (forcible transfer) and deportation - could be committed with a discriminatory intent in the execution of the common plan, was sufficiently substantial as to be foreseeable to Mr. Stanišić and that he willingly took that risk.<sup>27</sup>
60. The Trial Chamber's errors arise *inter alia*, from numerous erroneous findings either considered individually or collectively.<sup>28</sup>
61. Having properly assessed the totality of the evidence, no reasonable trial chamber could have found beyond a reasonable doubt, in the circumstances of this case, that:

<sup>27</sup> Judgement, Volume 2 of 3, paras. 770-774, 776-779, 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885.

<sup>28</sup> See *inter alia*, Judgement, Volume 2 of 3, paras. 342; 556; 600; 689; 700; 710; 715-716; 730; 738; 740-741; 743; 753; 759; 764-765; 771-774; 776-779; 806-807; 809; 811; 816; 820; 825; 827; 829; 831; 836; 840; 844; 849; 854; 858; 863; 868; 873; 877; 881; and 885.

### **Sub-Ground of Appeal 11.1**

62. The possibility that “killings” - both during the attacks and takeover of municipalities and in the prisons, detention centres and camps - could be committed with a discriminatory intent in the execution of the common plan, was sufficiently substantial as to be foreseeable to Mr. Stanišić and that he willingly took that risk.<sup>29</sup>

### **Sub-Ground of Appeal 11.2**

63. The possibility of the imposition and maintenance of restrictive and discriminatory measures against non-Serbs in these towns and villages, with a discriminatory intent, in the execution of the common plan was sufficiently substantial so as to be foreseeable to Mr. Stanišić and that he willingly took that risk.<sup>30</sup>

### **Sub-Ground of Appeal 11.3**

64. The possibility of the unlawful detention of Bosnian Muslims and Bosnian Croats at SJBs, prisons and improvised detention centres and camps, with a discriminatory intent, in the execution of the common plan was sufficiently substantial so as to be foreseeable to Mr. Stanišić and that he willingly took that risk.<sup>31</sup>

### **Sub-Ground of Appeal 11.4**

65. The possibility that torture, cruel treatment, and other inhumane acts, including beatings and rape, and inhumane conditions of detention, such as provision of starvation rations, and unhygienic and insufficient amenities, could be committed with a discriminatory intent, in the execution of the common plan, was sufficiently substantial so as to be foreseeable to Mr. Stanišić and he willingly took that risk.<sup>32</sup>

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<sup>29</sup> Judgement, Volume 2 of 3, paras. 774, 779, 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885 and 955.

<sup>30</sup> Judgement, Volume 2 of 3, paras. 772, 779, 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885 and 955.

<sup>31</sup> Judgement, Volume 2 of 3, paras. 773, 779, 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885 and 955.

<sup>32</sup> Judgement, Volume 2 of 3, paras. 776, 779, 804, 809, 813, 818, 822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885 and 955.

### Sub-Ground of Appeal 11.5

66. The possibility that looting, search and seizure, appropriation, and plunder of the moveable and immoveable property of the Bosnian Muslims, Bosnian Croats and other non-Serbs in the municipalities, could be committed with a discriminatory intent, in the execution of the common plan, was sufficiently substantial so as to be foreseeable to Mr. Stanišić and he willingly took that risk.<sup>33</sup>

### Sub-Ground of Appeal 11.6

67. The possibility that the wanton destruction and damage of religious and cultural property, could be carried out in a concerted effort to eliminate the historical moorings of the Bosnian Muslims and Bosnian Croats during and following the takeover of the Municipalities, with a discriminatory intent in the execution of the common plan, was sufficiently substantial so as to be foreseeable to Mr. Stanišić and that he willingly took that risk.<sup>34</sup>
68. The Trial Chamber's errors occasioned a miscarriage of justice.
69. Relief Sought: As a result of the Trial Chamber's errors, Mr. Stanišić respectfully requests the Appeals Chamber to: (i) quash the above findings;<sup>35</sup> (ii) return a verdict of NOT GUILTY under Count 1 for all of the underlying crimes except inhumane acts (forcible transfer) and deportation; (iii) quash the sentence of 22 years' imprisonment imposed by the Trial Chamber; and (iv) impose a new and appropriate, lower sentence.

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<sup>33</sup> Judgement, Volume 2 of 3, paras. 777, 779, 804, 809, 813, 818,822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885 and 955.

<sup>34</sup> Judgement, Volume 2 of 3, paras. 778-779, 804, 809, 813, 818,822, 827, 831, 836, 840, 844, 849, 854, 858, 863, 868, 873, 877, 881, 885 and 955.

<sup>35</sup> *Supra*, paras. 59-67.



**VII. Grounds of Appeal (12-15) – Errors Related to the Manifestly Unreasonable Sentence Imposed on Mr. Stanišić**

70. The following four Grounds of Appeal related to the manifestly unreasonable sentence imposed on Mr. Stanišić are independent of whether the relief sought in Grounds of Appeal 1-10 above is granted.

**12<sup>th</sup> Ground of Appeal**

71. The Trial Chamber erred in fact and in law when it imposed on Mr. Stanišić a sentence of 22 years imprisonment.<sup>36</sup> The sentence imposed is manifestly unreasonable in the circumstances of this case, particularly taking into account the form and degree of Mr. Stanišić's participation in the crimes committed. Having properly assessed the totality of the evidence, no reasonable trial chamber could have imposed such a harsh and patently excessive sentence.<sup>37</sup>
72. The Trial Chamber clearly abused its discretion.
73. Relief sought: As a result of the Trial Chamber's error and abuse of its discretion, Mr. Stanišić respectfully requests the Appeals Chamber to quash the sentence imposed by the Trial Chamber and to impose a new and appropriate, considerably lower sentence.

**13<sup>th</sup> Ground of Appeal**

74. The Trial Chamber committed discernible errors when it considered the following factors as aggravating circumstances in determining the sentence to be imposed on Mr. Stanišić:
- a. The fact that Mr. Stanišić's participation in the JCE was undertaken in his official capacity;<sup>38</sup>

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<sup>36</sup> Judgement, Volume 2 of 3, para. 955.

<sup>37</sup> Judgement, Volume 2 of 3, paras. 886-903 and 919-936.

<sup>38</sup> Judgement, Volume 2 of 3, para. 929.

- b. The fact that the crimes were committed during nine months;<sup>39</sup> and
- c. The fact that Mr. Stanišić is a well-educated individual, with a university degree in law, and with experience in politics prior to the Indictment period.<sup>40</sup>

75. The Trial Chamber's discernible errors had a significant effect on the determination of the sentence imposed on Mr. Stanišić.

76. Relief sought: As a result of the Trial Chamber's discernible errors, Mr. Stanišić respectfully requests the Appeals Chamber to quash the sentence imposed by the Trial Chamber and impose a new and appropriate, lower sentence.

#### 14<sup>th</sup> Ground of Appeal

77. The Trial Chamber erred by holding that Mr. Stanišić had not made any direct submissions in relation to mitigating circumstances.<sup>41</sup> More particularly, the Trial Chamber committed discernible errors when it failed to consider and/or to give appropriate weight to the following mitigating factors when determining the sentence to be imposed on Mr. Stanišić:

- a. The interviews that Mr. Stanišić gave to the Prosecution before the beginning of trial proceedings;<sup>42</sup>
- b. The extensive proof of good personal and professional character adduced in evidence;<sup>43</sup> and
- c. The multiple orders issued by Mr. Stanišić to, *inter alia*: (i) prevent the occurrence of crimes; (ii) protect the civilian population; (iii) investigate crimes against all citizens, whether "regular" crimes or war crimes, regardless

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<sup>39</sup> Judgement, Volume 2 of 3, para. 930.

<sup>40</sup> Judgement, Volume 2 of 3, para. 931.

<sup>41</sup> Judgement, Volume 2 of 3, para. 932.

<sup>42</sup> Judgement, Volume 2 of 3, para. 935.

<sup>43</sup> See *inter alia*, Judgement, Volume 2 of 3, paras. 923-926 and 936.

of the ethnicity of the perpetrators or the victims; and (iv) remove and arrest irregular members of the police force.<sup>44</sup>

78. The Trial Chamber's discernible errors had a significant effect on the determination of the sentence imposed on Mr. Stanišić.
79. Relief sought: As a result of the Trial Chamber's discernible errors, Mr. Stanišić respectfully requests the Appeals Chamber to quash the sentence imposed by the Trial Chamber and impose a new and appropriate, lower sentence.

### **15<sup>th</sup> Ground of Appeal**

80. The Trial Chamber erred in law and committed a discernible error by considering Mr. Stanišić's acts and conduct, in his official position as Minister of the Interior, simultaneously as an abuse of power that aggravates his culpability and as an abuse of power which minimizes the weight to be attributed to mitigating factors.<sup>45</sup>
81. The Trial Chamber's discernible error had a significant effect on the determination of the sentence imposed on Mr. Stanišić.
82. Relief Sought: As a result of the Trial Chamber's discernible error, Mr. Stanišić respectfully requests the Appeals Chamber to quash the sentence imposed by the Trial Chamber and impose a new and appropriate, lower sentence.

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<sup>44</sup> *Idem*.

<sup>45</sup> Judgement, Volume 2 of 3, paras. 929, 931 and 936.

**OVERALL RELIEF REQUESTED**

83. As a result of the above 16 Grounds of Appeal and 6 Sub-Grounds of Appeal, Mr. Stanišić respectfully requests the Appeals Chamber to:

- a. **FIND** that he was not a member of the common plan the Trial Chamber found to have existed;
- b. **QUASH** the findings of guilt pronounced against him by the Trial Chamber for Counts 1, 4 and 6, pursuant the joint criminal enterprise, categories 1 and 3, mode of liability;
- c. **HOLD** that Mr. Stanišić is not responsible for Counts 3, 5, 7, 8, 9 and 10; and
- d. **ENTER** findings of **NOT GUILTY** for all counts in the Second Amended Consolidated Indictment; and /or, in the alternative,
- e. **QUASH** the sentence imposed by the Trial Chamber as being manifestly unreasonable and **IMPOSE** a new and appropriate, considerably lower, sentence.

Word Count: 4,907 words

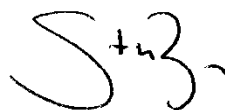
**RESPECTFULLY SUBMITTED ON THIS 23<sup>RD</sup> DAY OF APRIL 2014**

**COUNSEL FOR THE APPELLANT**




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**Slobodan Zečević**




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**Stéphane Bourgon**