

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-15-96-A

Date: 6 September 2021

Original: English

IN THE APPEALS CHAMBER

Before: A Bench of the Appeals Chamber

Registrar: Abubacarr Tambadou

THE PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

PROSECUTION NOTICE OF APPEAL

The Office of the Prosecutor:
Serge Brammertz

Counsel for Jovica Stanišić:
Wayne Jordash

Counsel for Franko Simatović:
Mihajlo Bakrač and Vladimir Petrović

1. Pursuant to Article 23 of the Statute of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Rule 133 of the Mechanism’s Rules of Procedure and Evidence, the Prosecution files this Notice of Appeal setting out its grounds of appeal against the Trial Chamber’s Judgement in the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, dated 30 June 2021 (written Judgement filed on 6 August 2021) (“Judgement”), and the relief sought.

2. Whenever this Notice of Appeal refers to an error of law, it is one that invalidates the verdict. Whenever reference is made to an error of fact, it is one that occasions a miscarriage of justice.

I. GROUND 1: THE TRIAL CHAMBER ERRED IN FAILING TO HOLD STANIŠIĆ AND SIMATOVIĆ CRIMINALLY RESPONSIBLE AS MEMBERS OF A JOINT CRIMINAL ENTERPRISE

3. The Trial Chamber erred in law and/or fact in paragraph 598 in failing to hold Stanišić and Simatović criminally responsible for committing the crimes through participation in a joint criminal enterprise.

4. This error occurred as a result of the following sub-errors, individually and/or cumulatively:

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

5. The Trial Chamber erred in law and/or fact in its assessment of Stanišić’s and Simatović’s contributions for the purpose of determining their joint criminal enterprise liability.

1. Sub-ground 1(A)(i): Incorrect legal standards for contribution

6. The Trial Chamber erred in law in paragraphs 382-572, including in paragraphs 361, 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, and in paragraphs 162 and 168 by adopting incorrect standards for assessing what can constitute a contribution and/or for assessing the significance of the contributions for joint criminal enterprise liability.

2. Sub-ground 1(A)(ii): Failure to adjudicate and/or lack of a reasoned opinion

7. The Trial Chamber erred in law in paragraphs 150 and 382-572 in failing to adjudicate a number of Stanišić’s and Simatović’s alleged contributions and/or provide a reasoned

opinion why it disregarded relevant conduct of Stanišić and Simatović in determining their contributions for joint criminal enterprise liability.

3. Sub-ground 1(A)(iii): Erroneous exclusion from adjudication

8. The Trial Chamber erred in law and/or fact in paragraph 453 in excluding from adjudication Stanišić's and Simatović's contributions to forcible displacement crimes in Sanski Most in 1995.

4. Sub-ground 1(A)(iv): Error of fact

9. The Trial Chamber erred in fact in paragraphs 162, 168 and 382-572 in failing to find that Stanišić and Simatović contributed to the common criminal purpose in ways additional to those listed in paragraph 597.

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

10. The Trial Chamber erred in law and/or fact in paragraphs 596 and 597 in failing to find that Stanišić and Simatović shared the intent required for joint criminal enterprise liability.

1. Sub-ground 1(B)(i): Compartmentalisation of evidence

11. The Trial Chamber erred in law in paragraphs 579, 581, 582, 583, 584, 592 and 593 in its assessment of Stanišić's and Simatović's shared intent by applying the beyond reasonable doubt standard to evidence in isolation.

2. Sub-ground 1(B)(ii): Failure to consider all relevant conduct

12. The Trial Chamber erred in law in paragraphs 576-596 in failing to consider all of Stanišić's and Simatović's relevant conduct in assessing their shared intent.

3. Sub-ground 1(B)(iii): Error of fact

13. The Trial Chamber erred in fact in paragraphs 576-597 in failing to conclude that Stanišić and Simatović shared the intent required for joint criminal enterprise liability.

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

14. The Trial Chamber erred in law in excluding and/or not relying on relevant and probative evidence that had not been admitted in the original trial (IT-03-69-T), pursuant to its Decision on Stanišić's Request for Stay of Proceedings of 2 February 2017.

REMEDY

15. The Prosecution requests that the Appeals Chamber
 - a. correct the Trial Chamber's errors;
 - b. in relation to Sub-ground 1(A): find that Stanišić and Simatović made additional contributions to the common criminal purpose, and that their contributions in their totality were significant;
 - c. in relation to Sub-ground 1(B): find that Stanišić and Simatović shared the intent, including by taking into account any additional contributions found under Sub-ground 1(A);
 - d. make all other necessary findings required for joint criminal enterprise liability;
 - e. find that Stanišić and Simatović are guilty as members of the joint criminal enterprise, and enter convictions; and
 - f. increase their sentences accordingly.

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

16. The Trial Chamber erred in law and/or fact in failing to hold Stanišić and Simatović criminally responsible for aiding and abetting the crimes in SAO Krajina, SAO SBWS, Zvornik, Doboje and Sanski Most.

17. This error occurred as a result of the following sub-errors, individually and/or cumulatively:

A. Sub-ground 2(A): The Trial Chamber erred in law in failing to adjudicate and/or provide a reasoned opinion

18. The Trial Chamber erred in law in paragraphs 604-608 in failing to adjudicate and/or provide a reasoned opinion on whether Stanišić and Simatović aided and abetted crimes in SAO Krajina, SAO SBWS, Zvornik, Doboje and Sanski Most.

B. Sub-ground 2(B): The Trial Chamber erred in fact

19. The Trial Chamber erred in fact in paragraphs 604-608 in failing to hold Stanišić and Simatović responsible for aiding and abetting crimes in SAO Krajina, SAO SBWS, Zvornik, Doboj and Sanski Most.

C. Sub-ground 2(C): The Trial Chamber erred in law in excluding and/or not relying on relevant and probative evidence

20. The Trial Chamber erred in law in excluding and/or not relying on relevant and probative evidence that had not been admitted in the original trial (IT-03-69-T), pursuant to its Decision on Stanišić's Request for Stay of Proceedings of 2 February 2017.

REMEDY

21. The Prosecution requests that the Appeals Chamber
- a. correct the Trial Chamber's errors;
 - b. find that Stanišić and Simatović substantially contributed to the crimes in SAO Krajina, SAO SBWS, Zvornik, Doboj and Sanski Most, including by taking into account any additional contributions found under Ground 1(A);
 - c. make all other necessary findings required for aiding and abetting liability;
 - d. find Stanišić and Simatović guilty for aiding and abetting the crimes in SAO Krajina, SAO SBWS, Zvornik, Doboj and Sanski Most, and enter convictions; and
 - e. increase their sentences accordingly.

Serge Brammertz
Prosecutor



Dated this 6th day of September 2021
At The Hague, The Netherlands



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