

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-15-96-A

Date: 13 January 2023

Original: English

IN THE APPEALS CHAMBER

Before: Judge Graciela Gatti Santana, Presiding
Judge Lee G. Muthoga
Judge Aminatta Lois Runeni N’gum
Judge Yusuf Aksar
Judge Claudia Hoefler

Registrar: Mr. Abubacarr M. Tambaou

Order of: 13 January 2023

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**ORDER FOR THE PREPARATION OF THE HEARING OF THE
APPEALS**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Mr. Jovica Stanišić:

Mr. Wayne Jordash
Mr. Joe Holmes

Counsel for Mr. Franko Simatović:

Mr. Mihajlo Bakrač
Mr. Vladimir Petrović

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

NOTING the judgement pronounced by the Trial Chamber of the Mechanism in the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, on 30 June 2021 and filed in writing on 6 August 2021,² and that the briefing of the appeals against the Trial Judgement filed by Mr. Jovica Stanišić (“Stanišić”), Mr. Franko Simatović (“Simatović”), and the Office of the Prosecutor of the Mechanism (“Prosecution”) concluded on 15 February 2022;³

RECALLING the Order of 5 December 2022, which sets the schedule for the in-person hearing of the appeals to be held on 24 and 25 January 2023, in The Hague, The Netherlands;⁴

CONSIDERING the need to ensure that the time allotted for the hearing of the appeals is used as efficiently as possible;

EMPHASIZING that the present order in no way expresses the Appeals Chamber’s views on the merits of the appeals, which will be set forth in the Appeal Judgement;

HEREBY INFORMS the parties that, during the course of the hearing of the Prosecution’s appeal, and without prejudice to any other matter that the parties or the Appeals Chamber may wish to address, they are invited to discuss the following issues:

(a) Prosecution Appeal Related to Sanski Most (see, e.g., Grounds 1(A)(i)(a)(iii), 1(A)(iv)(c), 1(B)(ii), and 2(B)(iv))⁵

- a. Is the Prosecution arguing that the Trial Chamber erred in law in paragraph 453 of the Trial Judgement by restricting its contribution analysis to whether payments from the State Security Service went to specific Serbian Volunteer Guard members who “participated in the commission of the [September] 1995 killings in Sanski Most, charged in the Indictment”?⁶

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 10 September 2021, p. 1; Order Replacing a Judge in a Case Before the Appeals Chamber, 5 July 2022, p. 1.

² *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Judgement, 6 August 2021 (“Trial Judgement”). See also T. 30 June 2021 pp. 1-16.

³ See Scheduling Order for the Hearing of the Appeals, 5 December 2022 (“Order of 5 December 2022”), n. 3 and references cited therein.

⁴ Order of 5 December 2022, p. 2.

⁵ See, e.g., Prosecution Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 19 May 2022) (“Prosecution Appeal Brief”), paras. 43, 113-116, 135, 212-217. See also Prosecution Appeal Brief, paras. 88, 90, 91.

⁶ See, in particular, Prosecution Appeal Brief, para. 43.

- b. Could Stanišić and Simatović incur joint criminal enterprise or aiding and abetting liability for crimes committed in Sanski Most in September 1995 based on State Security Service payments at that time – if attributable to Stanišić and Simatović – to the Serbian Volunteer Guard even if it were not established beyond reasonable doubt that payments went to the specific members who perpetrated the crimes?
 - c. Relying on references to the trial record contained in the appeal submissions – in particular the evidence of Witnesses RFJ-041 (including Exhibit P01128), RFJ-011, RFJ-088, as well as Exhibits P00826, P00541, and P00543 – please discuss the extent and significance of State Security Service payments to members of the Serbian Volunteer Guard around the time of the operations in Sanski Most and the impact of such payments on the charged crimes. Does this evidence eliminate all reasonable doubt that Stanišić and Simatović engaged in conduct that could support joint criminal enterprise or aiding and abetting liability based on crimes committed there?
- (b) Prosecution Appeal Related to Western Srem (see, e.g., Grounds 1(A)(i)(a)(v), 1(A)(iv)(a), 1(B)(ii), and 2(B)(iii))⁷
- a. Is the Prosecution arguing that the Trial Chamber erred in law in paragraph 162 of the Trial Judgement by restricting its contribution analysis to whether Unit members were involved in the commission of charged crimes in Western Srem?⁸
 - b. For Stanišić and Simatović to incur joint criminal enterprise or aiding and abetting liability based on crimes committed in Western Srem, was the Prosecution obligated to prove beyond reasonable doubt that Unit members committed crimes or is it sufficient to show that the role or engagement of the Unit in combat operations – if attributable to Stanišić and Simatović – significantly contributed to or substantially assisted the principal perpetrators in the commission of their crimes?
 - c. Relying on references to the trial record contained in the appeal submissions, please discuss how the evidence reflects that Unit members committed crimes in Western Srem or the extent, significance, and impact of the contributions of the Unit members to charged crimes committed there. Does this evidence eliminate all reasonable doubt that Stanišić

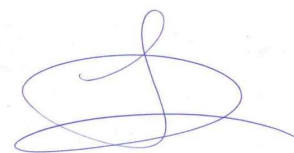
⁷ See, e.g., Prosecution Appeal Brief, paras. 49, 96-102, 135, 201-209.

⁸ See, in particular, Prosecution Appeal Brief, para. 49.

and Simatović engaged in conduct that could support joint criminal enterprise or aiding and abetting liability?

Done in English and French, the English text being authoritative.

Done this 13th day of January 2023,
At The Hague,
The Netherlands



Judge Graciela Gatti Santana
Presiding Judge

[Seal of the Mechanism]



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Date Created/ Daté du :	13 January 2023	Date transmitted/ Transmis le :	13 January 2023
		No. of Pages/ Nombre de pages :	4
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Other/Autre (specify/préciser) :
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Rev: August 2019/ *Rév. : Août 2019*