UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No.: **MICT-15-96-A**

Date: **21 November 2022**

Original: **English**

BEFORE THE APPEALS CHAMBER

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

Registrar: **Mr. Abubacarr Tambadou**

THE PROSECUTOR

v.

JOVICA STANISIC
FRANKO SIMATOVIĆ

Public

NOTICE OF FILING PUBLIC REDACTED VERSION OF SIMATOVIĆ DEFENCE APPEL BRIEF

The Office of the Prosecutor:
Mr Serge Brammerts
Ms Laura Baig
Ms Barbara Goy

Counsel for Mr.Stanišić:
Mr Wayne Jordash QC
Mr Joe Holmes

Counsel for Mr. Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

1. Simatovic Defence respectfully files public redacted version of Simatovic Defence Appeal Brief filed on 21 November 2021.

Respectfully submitted,
Counsel for the Accused:

Mihajlo Bakrač, Lead Counsel

Vladimir Petrović, Co-Counsel

Belgrade, 21 November 2022

Word Count: 141

UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No.: **MICT-15-96-A**

Date: **22 November 2021**

Original: **English**

BEFORE THE APPEALS CHAMBER

Before: **Judge Carmel Agius, Presiding**
Judge Lee G. Muthoga
Judge Aminatta Lois Runeni N'gum
Judge Yusuf Aksar
Judge Claudia Hoefer

Registrar: **Mr. Abubacarr Tambadou**

THE PROSECUTOR

v.

JOVICA STANISIC
FRANKO SIMATOVIĆ
Public Redacted Version

SIMATOVIĆ DEFENCE APPEAL BRIEF

The Office of the Prosecutor:

Mr Serge Brammerts
Ms Laura Baig
Ms Barbara Goy

Counsel for Mr.Stanišić:

Mr Wayne Jordash QC
Mr Joe Holmes

Counsel for Mr. Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

INTRODUCTION

1. The Trial Judgment in the present case was delivered on 30 June 2021. A written copy of the Judgment was served on 6 August 2021.

2. In this Judgment, the Trial Chamber found Franko Simatović guilty of Counts 1 to 5 of the Indictment having aided and abetted the charged crimes in Bosanski Šamac. Simatović was sentenced to a single sentence of 12 years of imprisonment.

3. On 6 September 2021 the Defence filed its Notice of Appeal in which the Defence set out the grounds of appeal against the Judgment of 30 June 2021.

4. In accordance with Rule 138 of the Rules, the Defence enters its "Defence Appeal Brief". This Appeal Brief is entered in accordance with the Notice of Appeal of 6 September 2021.

5. The Defence maintains all its arguments set out in the Final Trial Brief of 12 March 2021 and the Defence's views set out in the Final Brief can be viewed as an integral part of this Appeal Brief primarily having in mind the word limit in the appeal proceedings in this legal matter.

6. All errors in law and in facts that are indicated within the Grounds and Sub-grounds of the Notice of Appeal invalidate the Judgment and/or occasioning miscarriage of justice. All errors in facts referred to in this brief are errors that no reasonable trier of fact would commit. This attitude applies to every Ground and Sub-ground. This position will not be stated individually by the Defence in each Ground and Sub-ground for reasons of economy of pleading.

ARGUMENTS

GROUND 1: ***The Trial Chamber made an error in law and error in fact regarding the position and role of the accused Franko Simatović.***

Sub-grounds 1(1) and 1(2)

7. In considering the position and role of Simatović at the relevant time, the Trial Chamber finds that Simatović held high-level positions with significant powers and authority with the State Security Service and the State Security Department.[1] Simatović is charged with committing the acts charged against him as a member of the State Security Service/State Security Department[2], and the Trial Chamber analyses the circumstances of Simatović's position and role only in paragraphs 351 to 354 of the Judgment. In these paragraphs, however, the Trial Chamber does not explain on what basis it concludes that Simatović held a high-level position.

8. In para. 351 the Trial Chamber analyses Simatović's movement through the Service, noting that Simatović has been the Chief of the State Security Service's Second Administration in Belgrade since 8 January 1991. First, the Trial Chamber erroneously finds that this is the State Security Service Second Administration in Belgrade - this is the Second Branch of the State Security Service Administration in Belgrade.[3] So it's not about the Second Administration but about the Second Branch. Then, it is about the Second Branch within the part of the Service - Administration for the city of Belgrade and not the Administration in the Headquarters of the Service for the Republic of Serbia as a whole.

9. The position of Chief of a Section in the Second Branch is the lowest managerial level in the State Security Service.[4] There is no lower managerial position within the entire Service. Above the position of Chief of Section, there are five levels of management up to the level of the

[1] Judgement para. 354
[2] Indictment para. 2
[3] 2D00451 para. 382, State Security Administration in Belgrade covers in its activities only the city of Belgrade, Second (Intelligence) Administration in the seat of the State Security Department for the entire territory of the Republic of Serbia was formed in 1992, 2D451 para. 351, [redacted]
[4] 2D00451 paras. 410, 411, tt. OFS-17 19 February 2020 p. 37

Minister of the Interior of the Republic of Serbia - Assistant Head of the Sector, Head of Sector, Head of the Service for Belgrade, Chief of the Service at the level of the Republic of Serbia and then Minister of the Interior.[5] The positions of Assistant Chief of the Service and Deputy Chief of the Service should also be taken into account, in which case there are seven levels of management between the position of Simatović and the position of the Minister.

10. [redacted].[6]

11. Simatović held the position of Chief of the Section from 8 January 1991 to 1 May 1992.[7] Simatović's position in this time interval can in no way serve as a basis for concluding that this is a high-level position within the Service.

12. Paragraph 352 states that Simatović was appointed to the position of Deputy Chief of the Second Administration of the State Security Department by Stanišić on 29 April 1992. It is also stated that by being appointed to that position Simatović had directly subordinated to him up to a maximum of 94 employees.[8] The Trial Chamber also finds that the position of Deputy Chief of the Second Administration is a senior position within the Department.[9] Here, the Trial Chamber uses the report of Expert Witness Nielsen as the source.[10] When it comes to the number of employees, Nielsen, however, states that this is the number according to the systematization of jobs,[11] that this is the theoretical maximum - Nielsen does not provide specific data on the number of employees.

13. The Trial Chamber's conclusion that Simatović had a maximum of 94 employees under his leadership is simply illogical and impossible. Simatović has no one under his leadership in this period because the right of leadership is reserved for the Chief of the Administration. Simatović, as Deputy Chief, is one of those 94 who are managed and not the one who is managing.

[5] tt. OFS-17 19 February 2020 p. 42
[6] tt. [redacted]
[7] Judgement paras. 351, 352
[8] Judgement para. 354
[9] Judgement para. 352 fn. 1496
[10] tt. Expert Witness Nielsen 14 November 2017 p. 36
[11] The theoretically maximum number of employees is also indicated in 2D00451 para. 374

14. In addition to the disputed number of employees, the Defence finds that the relationship between Simatović and those employees at the time when he was Deputy Chief of the Second Administration is much more important. First, the position of Deputy Chief is a middle management level within the Department.[12] Also, the position of Deputy Chief did not allow Simatović to lead the Second Administration directly and independently. The Deputy Chief performs only the tasks that are entrusted to him by the Chief of the Administration. Also, the Deputy Chief is not a member of the Collegium of the State Security Department.[13]

15. The position of Simatović as Deputy Chief in the period from 1 May 1992 to 1 May 1993 excludes his ability to make independent decisions within the Second Administration, all for two reasons: the first reason is the principle of subordination in the State Security Department, the second reason is the fact that the Second Administration had its Chief of the Department in full capacity while Simatović was Deputy Chief.[14] [redacted][15] and Zoran Mijatović from 1 February 1993 to 10 October 1993[16] and they managed the Second Administration at a time when Simatović was their Deputy.

16. [redacted].[17] In addition to Simatović, Stanišić had six other Special Advisers and three Advisors.[18] The position of Special Advisor is not equal to Chief of an Administration in the State Security Department, nor does it give direct communication with the Administrations, but rather the duty is to propose to the Chief of the Department appropriate organizational, personnel and other arrangements.[19] The principle of subordination excludes the possibility of independent decision-making by Simatović in this period, given the specificity of the job to which he is assigned.[20] So, Simatović holds the position of Special Advisor outside the lines of subordination and he can only propose or advise in that position, but decisions are always made by the Chief of the Department.

[12] 2D00451 para. 412
[13] 2D00451 para. 412
[14] 2D00451 para. 417
[15] [redacted],
[16] 2D00061 pp. 11-12
[17] [redacted]
[18] 2D00451 paras. 401, 402
[19] 2D00451 paras. 401-403
[20] 2D00451 para. 416

17. In paragraphs 351 to 354, the Chamber correctly concludes that Simatović was assigned to three positions - Chief of Section from early 1991 to 1 May 1992, Deputy Chief of the Second Administration from 1 May 1992 to 1 May 1993 and Special Advisor from 1 May 1993 to 1996. However, none of these jobs can be considered a high-level position, for reasons explained above. These positions are either at the very bottom of the ladder like the Chief of Section positions, or are positions where there is no possibility to independently make decisions, which decision in the case of Deputy Chief is reserved with the Chief of the Administration and in the case of Special Advisor provided exclusively for the Chief of Service.

18. The Trial Chamber's conclusion from para. 354 that Simatović held a high-level position with significant powers and authority within the State Security Service and the State Security Department was simply not justified. The Trial Chamber does nothing else but note Simatović's movement through the Service, and that is not sufficient to reach a far-reaching conclusion about Simatović's authority. In paragraphs 351 to 354, the Trial Chamber does not analyse positions either formally or factually, does not cite any examples of "significant powers and authority" but concludes that power and authority exist and that it will analyse manifestations of power and authority in specific situations.

19. This methodological approach of the Trial Chamber leads to a serious error in law and facts. The position of authority and power is taken as an axiom not subject to proof, because the Trial Chamber fails to state the reasons why Simatović's position is assessed in this way. The Trial Chamber uses the content of the unproven axiom to explain specific events, even explicitly acknowledging this in para. 354. By doing this, the Trial Chamber is making a logical error in reasoning and this error is leading to an error in law and facts, the consequence of which is the establishing of responsibility for certain criminal offenses which is spoken of in appropriate places in this Appeal Brief.

Sub-ground 1(3)

20. In para. 29 of the Judgement the Trial Chamber states that Simatović participated in the planning and carrying out the attack on Lovinac on 5 August 1991, when, according to the

Trial Chamber, the first attack on this place took place.[21] The source for this conclusion is the testimony of RFJ-066 and the untested evidence of Milan Babić.[22]

21. It is unclear what the source is for the Trial Chamber's finding of Simatović's involvement in the first attack. In para. 26 of the Judgment, the Trial Chamber states that RFJ-066 did not personally see Simatović's participation and that the same Witness has no direct knowledge of the effects of the attack. The same paragraph also cites Babić's testimony, but paragraph 29 states that the Trial Chamber is reluctant to rely decisively on the impressions of Milan Babić and RFJ-066.

22. [redacted][23], [redacted]. In any event, the Trial Chamber refuses to base its findings in this section on the testimony of RFJ-066 and Milan Babić. Also, the Defence notes that RFJ-066 testified about only one attack, so there is no possibility for the Trial Chamber to accept his views on the first attack and that the non-acceptance relates to the second attack.

23. In addition, the Trial Chamber has great reservations about the testimony of both RJF-066 and Milan Babić. It states that Babić was a suspect when he testified in the Milosevic case, that his testimony in the Martić case was not completed, and that in the Simatović case the Defence never had the opportunity to test his testimony.[24] For Witness RJF-066 it is stated that the received assistance from the Prosecution regarding an asylum application, that he admitted that he had memory problems, and that with this Witness the testimony about the defendants was mostly hearsay.[25]

24. So, the disputed conclusion is untenable for two groups of reasons: first, [redacted]; second, the Trial Chamber does not accept the testimony of RFJ-066 and Milan Babić in this regard.

---

[21] Judgement para. 29
[22] Judgement para. 26 fn. 55 and 56
[23] [redacted]
[24] Judgement para. 14, 15
[25] Judgement para. 16

25. The Defence concludes that if, as noted above, the testimonies of Milan Babić and RFJ-066 regarding the events in Lovinac are excluded, as the Trial Chamber does, then no other sources remain for the allegation contained in para. 29 that Simatović participated in the planning and carrying out of the attack on Lovinac on 5 August 1991. The disputed allegation remains without source and as such constitutes an error in law and fact committed by the Trial Chamber.

Sub-ground 1(4), 1(5) and 1(10)

26. In para. 388 of the Judgment, the Trial Chamber finds that Simatović (together with Stanišić) formed the Unit at least by August or September 1991, and that Simatović (together with Stanišić) had authority over the Unit and determined its use and deployment until at least mid-April 1992 The Trial Chamber draws this conclusion from the testimony of Witness RFJ-137, as explained in para 405 of the Judgment.

27. Witness RFJ-137, however, cannot provide relevant information on when the Unit was formed and under what circumstances. [redacted][26] [redacted][27] [redacted][28] [redacted][29] [redacted][31] [redacted][32]

[redacted]

26
27
28
29
30
31
32

28. The Trial Chamber in para. 405 concludes that the Unit operated under the command and control of Stanišić and Simatović, all on the basis of the testimony of RFJ-137.[33] The Trial Chamber makes a serious error in fact and law in basing its position in paragraph 388 on the conclusion in paragraph 405, which in turn relies solely on the testimony of RFJ-137. Witness RFJ-137 did not have adequate information, nor was he able to have such information in order to be able to draw conclusions about issues of the existence or management of part of the State Security Service, later the State Security Department. The Witness simply does not have relevant information, so the Witness offers information that is inaccurate, incomplete and contradictory, which is pointed out in this Ground of Appeal.

29. Finally, according to the Law on Internal Affairs, the authority to form an organizational unit within the Ministry of the Interior of the Republic of Serbia belonged exclusively to the Minister. The Minister was the one who determined the organization, the field of work, the way of management and other things.[34] Therefore, no reasonable trier of facts can conclude that part of the MUP, i.e. part of the State Security Service can be formed in an informal way by the decision of a man who was at that time Chief of Section in the Administration of the State Security Service for the city of Belgrade. This is simply not possible either logically or formally legally, nor was it possible taking into account the manner and structure of the State Security Service, as part of the MUP of the Republic of Serbia.

Sub-ground 1(6)

30. In para. 388 of the Judgment, the Trial Chamber finds that Simatović had authority over the use and deployment of JATD from its creation in August 1993 until the end of the period covered by the Indictment.[35] Although Simatović was found guilty only in connection with the events of 1992, the Defence elaborates the Trial Chamber's errors also in this context, because the acceptance of this thesis insinuates continuity in Simatović's conduct, which simply did not exist.

[33] Judgement para. 405, fn. 1631, 1632
[34] P01550 Art. 6
[35] Judgement para. 388

31. The Defence alleges that this claim is unfounded and unsubstantiated. The Trial Chamber refers to this as a "general matter".[36] Here again, the Trial Chamber reaches for the unproven, which does not differ in nature from the Judgement. Namely, the Chamber is not even trying to prove that Simatović had authority over JATD after its establishment in August 1993. In paragraphs 432 to 434, which relate to the formation of the JATD in August 1993 and the events after its formation, Simatović's name is mentioned only in the context of reporting, which is discussed in Sub-ground 1(13). It is stated that JATD was under the authority of Stanišić, who, in addition to managing JATD, made all decisions regarding this organizational Unit.[37] It is also stated that Stanišić appointed Milan Radonjić, Deputy Commander of JATD, who operatively managed the Unit.[38] The inclusion of Simatović in the collective claim that the "Accused had authority" from para 388 is an unfounded and erroneous allegation which the Trial Chamber does not even attempt to substantiate by facts.

Sub-grounds 1(7), 1(8) and 1(9)

32. The Trial Chamber states that Simatović did play a role in organizing the training at the camp in Golubić including through facilitating instruction.[39] The Trial Chamber finds that this instruction facilitation was realized through Captain Dragan, who is alleged to have been the main instructor at Golubić.[40]

33. The Trial Chamber's finding about cooperation between the State Security Service and Captain Dragan regarding instruction in Golubić is completely unfounded and based on several pieces of evidence, primarily testimonies of Milan Babić and RFJ-066,[41] in respect of which the Trial Chamber has serious reservations, which has already been mentioned. In doing so, the Trial Chamber ignores the vast amount of credible evidence that precisely defines the position and role of Captain Dragan in Knin during the summer of 1991.

[36] Judgement para. 388
[37] Judgement para. 432
[38] Judgement para. 432, 434
[39] Judgement para. 397
[40] Judgment para. 399
[41] Judgement para. 399 fn. 1616, 1617, 1618

[redacted][42][redacted][43][redacted]
[redacted][44][redacted]
[redacted]

35. The Trial Chamber's conclusion that the extent of Simatović's personal involvement with Captain Dragan's arrival in Knin cannot be determined[45] also undermines the thesis of cooperation in the organization of training. The Trial Chamber does not therefore conclude how and why and under what circumstances Captain Dragan came to Knin, but concludes that there was cooperation. The Defence however finds that the circumstances of the arrival of Captain Dragan are decisive for explaining his position and role in Knin. The manner and circumstances of arrival are key to understanding the reasons and role. The Trial Chamber decides to leave the manner and circumstances of his arrival inconclusive, despite the numerous pieces of evidence that would provide a basis for a fact-based conclusion about the manner in which he arrived, and which the Defence explained in detail.[46]

36. The Trial Chamber also uses a report allegedly made by Captain Dragan as evidence that Dragan submitted reports to the State Security Department and suggested further activities.[47] The report does not show which State Security Service the document was submitted to, because the same service also existed in SAO Krajina. It is also not visible to whom the report is delivered, nor the date when the report was prepared.

37. As the Trial Chamber decided to disregard numerous pieces of evidence about the circumstances of Captain Dragan's arrival in Knin, it dominantly based on Milan Babić's and RFJ-066's testimonies and made conclusions that were invalidated by the very fact that they

---

42 [redacted]
43
44 [redacted] Judgement para. 400 fn. 1622
45 Judgement para. 399
46 [redacted]
47 Judgement para. 399, P00248

came from witnesses whose testimony the Trial Chamber itself reasonably doubted.[48] This contradiction in terms of access to available facts leads to error in law and error in facts regarding the position and role of Captain Dragan in relation to the State Security Service.

38. Para. 403 of the Trial Chamber's Judgment states that Simatović may have played a role in contributing to the training in Golubić in May and July/August 1991 by facilitating the provision of instructors. These allegations are even more explicit in para. 409 of the Judgment where it is concluded that the role of Simatović is through the use of Serbian Security Service affiliated trainers.[49] As already mentioned, the Trial Chamber refuses to analyse the affiliation of the trainer, primarily Captain Dragan, with the State Security Service. The Trial Chamber refuses to draw conclusions about whose idea, whose invitation, whose agreement, whose organization it is for Captain Dragan to come to Knin and participate in the training.

39. The Trial Chamber is satisfied by the allegations of witnesses Babić and RFJ-066 about the Service's contacts with Captain Dragan when he was already in Knin. Here, however, the Trial Chamber ignores other reasonable alternative reasons that may explain the contacts between Captain Dragan and some members of the Service. No reasonable trier of fact could ignore the evidence that explains the reasons for Simatović's stay in Knin and the reasons why Simatović was interested in Captain Dragan.

40. The State Security Service of Serbia, specifically Stanišić, recognized the need to send operatives to the area of SAO Krajina.[50] [redacted].[51] In that context, Captain Dragan was the subject of Simatović's interest in Knin, and that interest was an expression of the continuity of Captain Dragan's processing by the State Security Service of Serbia.[52]

[48] Judgement paras. 14, 15, 16
[49] Judgement paras. 403, 409
[50] P00242 p. 3
[51] [redacted]
[52] tt. OFS-15 26 November 2019 pp. 32-33, [redacted]

41. The circumstances referred to here by the Defence provide a reasonable alternative conclusion about the nature and reasons for Simatović's stay in Knin in the summer of 1991, which the Trial Chamber failed to make.

42. Finally, the evidence adduced in this case does not support the allegation that Dragan Filipović and Milan Radonjić were instructors in the camp. The only evidence again relates to Babić and RFJ-066 because other evidence referred to by the Trial Chamber does not confirm that Radonjić and Filipović are instructors in Golubić.[53] [redacted]

43. Although the only evidence is from Milan Babić and the RFJ-066 the Trial Chamber fails to consistently implement its position on the probative value of these testimonies. A few paragraphs further, in para. 408 of the Judgment, the Trial Chamber deals with the camps at Samarica and Korenica, and there according to fn. 1648 rejects the arguments of the Prosecution because they are based on the testimony of these two witnesses. Although in paragraphs 14 to 16 of the Judgement the Trial Chamber states the reasons for cautiously approaching the testimony of Babić and RFJ-066, in fn 1648 in para. 408 it explains the position of the Trial Chamber that only the statements of these two witnesses are not sufficient to make conclusions about the commission of crimes attributable to the Accused. Nowhere does the Trial Chamber explain its ambivalent attitude towards these witnesses, especially nowhere does it explain why it relies on them, very often as the only sources, for the conclusions challenged by this Ground of Appeal.

44. The Defence concludes that the Trial Chamber errs in fact and law in concluding that Simatović contributed to the training of members of the SAO Krajina Police through the use of trainers associated with the State Security Service.

[53] Judgement para. 399 fn. 1617

Sub-ground 1(11)

45. The Defence alleges that the reasons why the Trial Chamber errs in concluding in para. 407 of the Judgment are set out in detail in Ground 2 of this Appeal and will not further be cited here in order to avoid repetition of the arguments.

Sub-ground 1(12)

46. The Trial Chamber in para. 409 concludes that Ležimir and Pajzoš were camps that operated under Simatović's authority and control. The Trial Chamber, however, fails to explain the reasons for this conclusion. Namely, in paragraphs 406, 407 and 408 of the Judgment, which precede this conclusion of the Trial Chamber, there is nothing to confirm such a conclusion. These paragraphs state who was in the camps, it is stated that there was also additional training in Ležimir, but there are no elements to substantiate the conclusion about authority.

Sub-ground 1(13)

47. The Trial Chamber in para. 432 of the Judgment states that JATD was responsible to Simatović, as the Assistant Chief of Serbian State Security, and that reports were submitted to Simatović in that capacity.[54] This allegation is based on the testimony of witness RJS-12.

48. In paragraphs 432 to 434, in which paragraphs the jurisdiction over the work of the JATD in the period after August 1993 is explained, Simatović is mentioned only once, and this through the allegation in RJS-12.

49. The testimony of RJS-12 in this context, however, is presented extremely selectively. In fn. 1723 the testimony is cited as a source however, the transcript does not provide a basis for making conclusions, as the Trial Chamber does. The witness mentions that the reports were forwarded to the Second Administration but does not know the details.[55] The witness in fact doesn't even know Simatović's position, he doesn't mention that he was an Assistant Chief.[56]

[54] Judgement para. 432
[55] tt. RJS-12 1 October 2019 p. 49
[56] tt. RJS-12 1 October 2019 p. 50

The witness clearly demonstrates that he does not actually know about Simatović's position at the relevant time.[57]

50. Thus, the testimony of RJS-012 alone does not provide a basis for the conclusion challenged by this Sub-ground. As this testimony is the only source that emphasizes Simatović in the context of authority after August 1993, the Defence concludes that any conclusion in this regard is without adequate reasoning and constitutes an error of law and fact.

Sub-ground 1(14)

51. The Trial Chamber in para. 434 of the Judgment states that with regard to Camp Pajzoš, there is evidence that Milan Radonjić sent JATD reserve forces to the camp in late 1993 and 1994, and that those forces trained at the camp from June to autumn 1995.[58]

52. OFS-018 was in the area of Pajzoš from the beginning of August 1995 to December of the same year, and this as a member of JATD. JATD was tasked on Pajzoš to guard the so-called Tito's villa which housed radio reconnaissance equipment. There were vineyards around the building on Pajzoš and its surroundings were mined due to the characteristics of the terrain.[59]

53. Training in the area of Pajzoš was not possible because the area was small, intersected by vineyards.[60] [redacted][61] also compromises the conclusion that it was possible to organize training on Pajzoš.

54. The Trial Chamber concludes based on the testimony of RJS-12 that JATD reserve staff was securing Pajzoš, however, the testimony of RJS-12 is not unequivocal in this regard. In the answer to one question, he mentions JATD and the reserve force of JATD[62], while already for the next question he answers only that JATD provided security.[63]

[57] tt. RJS-12 25 September 2019 pp. 47-51
[58] Judgement para. 434
[59] tt. OFS-18, 19 November 2019 pp. 64, 65; [redacted]
[60] 1D00384 para. 55
[61] [redacted]
[62] tt. 2 October 2019 p. 11
[63] tt. 2 October 2019 p. 12

55. The Defence concludes that the Trial Chamber erred in establishing the facts regarding the possibility of training on Pajzoš and the presence of the JATD reserve force from the end of 1993.

Sub-ground 1(15)

56. The Trial Chamber concluded in para. 494 and 505 of its Judgment that Simatović was involved in the provision of some financial support to the SAO Krajina police between late 1990 and the first half of 1991, but not in relation to the specific details of such support.[64] This conclusion of the Trial Chamber is based solely on the testimony of Witness RFJ-066.[65]

57. First, the Defence wishes to point out the Trial Chamber's omission to individualize and concretize the role of each Accused in this case. Namely, in relation to the disputed allegation, the Trial Chamber treats Simatović and Stanišić as a homogeneous group of mutually equal persons that acts and influences events and actors in the same way and with equal effects. The Trial Chamber, however, in its reasoning of the established facts had to individualize the role of each Accused which was determined by the position of each of the Accused in this case.

58. The Defence fully challenges the testimony of Witness RFJ-066, which is discussed in several places in this Brief, including within this Sub-ground. The Defence here preliminarily deals with the way the Trial Chamber treats the role of each Accused. So when it comes to alleged funding, the Trial Chamber finds that Stanišić is negotiating with Minister Bogdanovic to agree help for SAO Krajina, Stanišić gives the green light to Milan Martić to establish police stations[66], Martić visits Stanišić once or twice a week in his office in Belgrade and brings cash and technical equipment.[67] RFJ-066 and Nikola Rastović, whom Martić placed in charge of finances, personally go to Stanišić's office and allegedly take the money.[68] As for Simatović, the Trial Chamber states that Simatović delivered bags to Knin and that RFJ-066 never saw the contents of those bags.[69] [redacted]

[64] Judgement paras. 494, 505
[65] Judgement paras. 493, 494
[66] Judgement para. 492
[67] Judgement para. 493
[68] Judgement para. 493
[69] Judgement para. 493

[redacted][70]

59. At the time of the alleged financing, Stanišić was the Deputy Chief of the State Security Service[71] while Simatović was the Chief of a Section within the State Security Service Administration for the City of Belgrade.[72] Therefore, the role of both Accused can in no way be viewed uniformly without differentiating the significance and consequences of the actions that are determined in relation to the Accused. The allegation that Stanišić and Simatović were involved in providing some financial support requires a precise definition and delineation of the role and consequences of the actions of each of the Accused. Given the great difference in the hierarchy in the State Security Service between Stanišić and Simatović at that time and later, it is impossible and unfair to equate the role of an operative in the Service, which was Simatović with the Deputy Chief of the State Security Service who is also Assistant Republican Secretary/Minister of the Interior appointed to this position by the Government of the Republic of Serbia,[73] which at the relevant time was Stanišić.

60. With regard to the specific allegation of "some financial support" found by the Trial Chamber[74], this conclusion is based entirely on the testimony of Witness RFJ-066.[75] The Trial Chamber does not explain how and under what circumstances it can accept RFJ-066's testimony and how its occasional acceptance of his testimony reconciles with the general remark given in the Evidentiary Principles stating that the Trial Chamber carefully scrutinizes it in the context of the assistance he received from the Prosecution, admitted memory lapses and statement that his testimony is for the most part hearsay.[76]

61. RFJ-066 is the only source for allegations of some financial support. RFJ-066 testifies contradictorily and inconsistently on the type of this assistance. [redacted][77] [redacted]

[70] [redacted]
[71] Judgement para. 342
[72] Judgement para. 351
[73] 2D00451 paras. 249-252
[74] Judgement para. 494
[75] Judgements paras. 492, 493
[76] Judgement paras. 14, 16
[77] [redacted]

[redacted][78]

[redacted][79]

[redacted]

[redacted][81] [redacted][82] [redacted]

[redacted][83] [redacted]

[redacted][84] [redacted]

62. [redacted]

[redacted][85]

63. In this matter also, the Trial Chamber had to remain consistent with its well-founded and reasonable scepticism towards everything that RFJ-066 says. The Trial Chamber concludes that RFJ-066 is a witness of disputed credibility, concludes that his testimony about the frequency of visits to Stanišić's office in Belgrade for taking money is not convincing, states that he has never seen money, states that there are inconsistencies in the testimony, but all this is not enough for the Trial Chamber to conclude that again in this situation Witness RFJ-066 cannot be trusted. By accepting the contradictory fragments of the hearsay testimony of RFJ-066 the Trial Chamber errs in law and facts.

Sub-ground 1(16)

64. The Trial Chamber in para. 501 concluded that Stanišić and Simatović were involved in the provision of weapons to the SAO Krajina police in late 1990 and early 1991. The Trial Chamber did not conclude on the specific details of such support and bases its position also in this case on the testimony of Witness RJF-066.[86]

---

78 [redacted]
79
80
81
82
83
84
85
86 Judgement para. 501

65. The Defence includes here the allegations already stated with respect to the Trial Chamber's position on Witness RFJ-066 given in Ground 1 Sub-grounds 3, 7, 8, 9 and 15 and that will not be repeated here. The Defence notes that the Trial Chamber, despite serious reservations, makes important conclusions solely on the basis of the testimony of witness RFJ-066.

66. The Trial Chamber's conclusion on financial support[87] and the conclusion on involvement in the provision of weapons[88] are based on an unsustainable logical construction. Namely, in both cases, the Trial Chamber trusts witness RFJ-066, but makes an impossible construction in the conclusion making process. The Trial Chamber therefore believes in the general conclusion suggested by RFJ-066 - that there was financial and support in weapons but does not believe the facts, the specific allegations made by RFJ-066 in his statements. So the Trial Chamber does not believe when RFJ-066 says that Simatović delivered weapons in trucks from 1990 to the first half of 1991,[89] and it does not trust him because it approaches his testimony with caution and with the awareness of the existence of inconsistencies in the testimony.[90] Although the Trial Chamber does not believe any details of the testimony of Witness RFJ-066,[91] this does not preclude the Chamber from relying on a conclusion which would be expected to be beyond a reasonable doubt. Such a pattern of inference cannot lead to a conclusion beyond a reasonable doubt. By this manner of coming to conclusions, allegations of the Trial Chamber from para. 494 and para. 501 which are sublimated in the overall conclusion in para 504 cannot be considered as conclusions of a reasonable trier of facts. Premises that the Trial Chamber does not believe cannot be used as a foundation of a conclusion beyond a reasonable doubt. By this conclusion the Trial Chamber errs in law and of fact.

67. Finally, the Trial Chamber in para. 501 states that it carefully considered the totality of RFJ-066's evidence and accepted it only to the extent that Stanišić and Simatović were involved in the provision of weapons. The Trial Chamber nowhere explains how it decided to make this selection within the testimony of Witness RFJ-066. Also, the statement "were involved in the

[87] Judgement para. 494
[88] Judgement para. 501
[89] Judgement para 499, fn. 1998
[90] Judgement para. 501
[91] The Trial Chamber exclusively cites the allegations of RFJ-066; in fn 1995, fn 1996, fn 1997, fn 1998, fn 1999, fn 2000; The Trial Chamber offers the allegations of Witness RFJ-066 (which it does not trust) as a basis for the conclusion from the para. 501. [redacted]

provision of weapons" is completely vague and unclear. This allegation is unclear to the extent that it is not clear from the Judgement whether it is a matter of significant or insignificant participation, whether it is a matter of legal or illegal conduct, whether it is an act with intent or without it. Simply, the conclusion which, with its vagueness and lack of substantiation, makes conclusions from paragraphs 501 and 504 conclusions where there is an error in law and an error of fact.

68. In para. 499 of the Judgment, the Trial Chamber states allegations of witness RFJ-066 (which it does not trust) as a basis for the conclusion in para. 501. Since, of course, the Defence also disputes the veracity of RFJ-066's testimony, the Defence here only wishes to point to paragraphs 240 to 250 of the Simatović Defence Final Trial Brief which explains in detail why it is impossible to believe RFJ-066's allegations related to the arming in SAO Krajina and the alleged involvement of Simatović in that arming.

GROUND 2: ***The Trial Chamber made an error in law and error in fact when it established that Simatović was responsible for aiding and abetting the crimes committed in Bosanski Šamac***

Sub-ground 2(1)

69. The Trial Chamber erred in facts and in law when it established that it could rely on the testimony of Witnesses Todorović and RFJ-035, as stated in paras. 206, 219, 220, 227, 229.

70. Already in its Final Trial Brief, the Defence has given extensive arguments and reasons why trust should not be placed in Witnesses Todorović and RFJ-035, and that a conviction cannot be based on their testimonies. However, the Trial Chamber did not give adequate weight to these reasons and arguments provided by the Defence and did not fully respect the reasons given, using parts of these testimonies to make conclusions on the responsibility of the accused, which led the Trial Chamber to err in facts and in law.

71. When it comes to Witness Stevan Todorović, it is an indisputable fact that he led the police forces before, during and after the capture of Bosanski Šamac, all in accordance with Nikolić's orders.[92] It is also an indisputable fact that Witness Todorović worked closely with the commander of the 17th Tactical Group (TG) of the JNA, Colonel Stevan Nikolić, who commanded all forces in the takeover of Bosanski Šamac and the Crisis Staff of Bosanski Šamac Municipality, whose president was Blagoje Simić.[93] Todorović was also in close contact with Dragan Đorđević aka Crni, who, when Todorović and Simić were arrested, immediately blocked the corridor, which was the only road between the eastern and western parts of Republika Srpska and thus forced the release of Todorović and Simić.[94]

72. These indisputable facts, as well as numerous other facts and evidence, which Simatović Defence presented in detail in its Final Trial Brief, clearly show that Stevan Todorović was one of the most responsible for the crimes that took place in Bosanski Šamac before, during and after its takeover.[95]

---

[92] Witness Petar Đukić, 16 December 2019., p.19;
[93] Witness Petar Đukić, 16 December 2019., p.20;
[94] P01953, p.5, 6;
[95] [redacted]

73. Stevan Todorović's testimony is therefore strongly influenced by the fact that on 29 November 2000 he concluded a Plea Agreement with the Prosecutor's Office and accepted extensive cooperation with the Prosecutor's Office in such a way that he could testify for the Prosecutor's Office in other cases, when requested to do so. In return, the Prosecution accepted that if Todorović responded to testify in other cases and provided the requested information, the Prosecution would not seek a sentence of more than 12 years for him.[96]

74. It is obvious, therefore, that after concluding this agreement, Todorović was important to the Prosecution, which subsequently formed the Indictment against Stanišić and Simatović. Also, it was important for Todorović to satisfy the Prosecution in order for the Plea Agreement to be respected.

75. Simatović Defence considers that a significant number of the allegations made by Witness Todorović do not have adequate corroboration with other evidence admitted in this case.

76. Finally, even if all of Stevan Todorović's allegations were true and acceptable, Simatović Defence finds that the Trial Chamber completely misinterprets them and uses them in its Judgement, which Simatović Defence will analyse in more detail in a further statement in this appeal.

77. As far as Witness RFJ-035 is concerned, Simatović Defence claims that this is a Witness on the basis of whose testimony nothing can be concluded about the connection between the RDB of the Serbian MUP and Franko Simatović himself with the events in Bosanski Šamac. Also, based on his testimony, no conclusion can be drawn about any connection between the group of 30 volunteers and 20 locals, who were allegedly on Pajzoš for training with Franko Simatović. Nor can the conclusion be drawn from the testimony of this Witness that Simatović has anything to do with their training.

78. [redacted][97][redacted]

[96] P01923;
[97] [redacted];

[redacted]

79. In addition, [redacted][98][redacted][99][redacted]

80. [redacted][100][redacted][101][redacted]

81. As for his testimony regarding Simatović's role, it is obvious that every time he was questioned about that circumstance, he gave different, contradictory answers.

98 [redacted]
99 [redacted]
100 [redacted]
101 [redacted]

82. [redacted][102][redacted][103][redacted].

83. [redacted]".[104]

84. [redacted],[105][redacted]"[106]

85. [redacted][107][redacted][108]

86. [redacted].[109][redacted].[110][redacted]

102 [redacted];
103 [redacted];
104 [redacted]
105 [redacted];
106 [redacted];
107 [redacted]
108 [redacted];
109 [redacted];
110 [redacted]

[redacted][111]

87. [redacted][112][redacted][113][redacted][114][redacted].

88. [redacted][115][redacted][116][redacted][117][redacted][118]

89. Simatović's Defence concludes that Witness RFJ-035 cannot be given any faith, because he has no direct knowledge, his statements are contradictory and mutually exclusive, often absurd and impossible. [redacted]

111 [redacted];
112 [redacted];
113 [redacted]
114 [redacted];
115 [redacted]
116 [redacted];
117 [redacted]
118 [redacted];

[redacted]

Sub-ground 2(2)

90. The Trial Chamber erred in facts and in law when it established that before 11 April 1992 Simatović held a briefing on Pajzoš with paramilitaries as stated in para. 209 and around 10 April 1992 with the Unit members as stated in para. 417, which was transferred by JNA helicopters from Ležimir to Batkuša and informed them about their deployment to Bosanski Šamac, as stated in para. 209 and para. 417.

91. What Simatović's Defence notes here and what it wants to draw attention to is the fact that this group from "Pajzoš" the Trial Chamber in para. 209 called Paramilitaries, and in para. 417 called this same group Unit members.[119]

92. This inconsistency relevant to the belonging of this group shows that even the Trial Chamber is not clear whether it is a group of paramilitaries or a group that belonged to some state structure, in this case the DB of the MUP of Serbia. At the same time, and which will especially be discussed in the text of the appeal that follows, this group is treated as "not formally part of the Unit"[120] which is the third categorization that makes this Judgement illegal in that part.

93. What Simatović Defence especially wants to emphasize at this point is that the Trial Chamber in para. 209 and para. 417 establishes that Franko Simatović "on or around 11 April 1992" held a briefing with this group on Pajzoš.[121] However, in the same Judgement, it states that Simatović addressed the Unit members around 10 April 1992.[122] Simatović Defence deems that the Judgement must not have such inconsistencies, which obviously stem exactly from the unreliability of the evidence on the basis of which these facts are established.

[119] Judgement, 30 July 2021, paras. 209 and 417;
[120] Judgement, 30 June 2021, para416
[121] Judgement, 30 July 2021, para. 209;
[122] Judgement, 30 July 2021, para. 417;

94. Further, although regarding the briefing that Simatović allegedly held, the Trial Chamber emphasizes witnesses RFJ-035, Todorović, Đukić, Tihić and Lukač, [redacted] [123]

95. [redacted]

96. The Defence has already spoken about the reliability of the testimony of Witness RFJ-035 and his uncredibility. In the previous part of the appeal, Simatović Defence also drew attention to contradictions and inconsistencies regarding this fact, and it does not want to repeat itself on this topic.

97. What should be emphasized here is that the Trial Chamber, in addition to making a mistake in establishing the facts, also violated the rights. Namely, the Trial Chamber could not take the briefing, which Simatović allegedly held, as an established fact on the basis of only one testimony, i.e. on the basis of only one sole piece of evidence. In order for a fact to be considered established, it is necessary that there are at least two or more pieces of evidence, i.e. that the testimony of one Witness was also confirmed by some other evidence in relation to one and the same event, i.e. one and the same fact.

98. It is obvious and undoubted, therefore, that the Trial Chamber erred in facts and law when it established that in the first half of April 1992 Simatović had briefed members of the group on Pajzoš, who would then go to Bosanski Šamac by military helicopters.

99. It is especially important to point out that this fact could not be established beyond a reasonable doubt, and it is one of the key facts for establishing the criminal responsibility of Franko Simatović.

[123] Judgement, 30 July 2021, para. 209, fn. 943-946;

Sub-ground 2(3)

100. The Trial Chamber erred in facts and in law when it established that 20 locals from Bosanski Šamac and 30 persons from Serbia who had undergone special training in Pajzoš participated in the planned takeover of Bosanski Šamac, as stated in para. 214.

101. Simatović Defence refers the Appeals Chamber to the fact that the Trial Chamber, found that this group of 30 persons from Serbia and about 20 locals from Bosanski Šamac underwent alleged special training on Pajzoš, within the existing local JNA brigade.[124]

102. The first thing that catches the Defence's attention is the fact that the Trial Chamber is talking about some special training, although there is no evidence in the case file that any "special" training was conducted.

103. Further, the Trial Chamber cites Witness Todorović as support for this finding.[125]

104. [redacted]".[126]

105. At first glance, it is obvious that the Trial Chamber has no evidence of any special training, and especially no evidence that the training was organized and conducted on Pajzoš.

106. Simatović Defence refers the Appeals Chamber first to the testimony of two Simatović Defence witnesses, [redacted][127] and Dejan Plahuta[128].

[124] Judgement, 30 July 2021, para. 214;
[125] Judgement, 30 July 2021, para. 214, fn. 962;
[126] [redacted]
[127] [redacted]
[128] OFS-18

107. [redacted].[129]

108. [redacted].[130] [redacted].[131]

109. [redacted].[132]

110. Also, Witness Dejan Plahuta stayed on Pajzoš, non-stop from August to December 1995, precisely as a guard who guarded this Intelligence Centre. He claims that his duty was to secure Pajzoš, that there were no conditions for any camp on Pajzoš and that no training was carried out, but that the soldiers only secured that intelligence station.[133]

111. Finally, in his testimony before the Trial Chamber Witness Vojislav Cvetković[134] [redacted].[135] The Witness further stated that there was a group that secured workers in the centre and the equipment.[136]

---

[129] [redacted]
[130] [redacted];
[131] [redacted];
[132] [redacted];
[133] OFS-18, tt. 19 November 2019, p. 64-65; 21 November 2019, p.10;
[134] OFS-27
[135] [redacted];
[136] OFS-27, tt. 02 September 2020, p. 58; p. 60;

112. Finally, this Witness's answers to an unequivocal question is that he as one of senior officers in the DB of Serbia has never heard that there was some sort of training centre on Pajzoš.[137]

113. [redacted].[138]

114. [redacted].[139]

115. [redacted]."[140]

116. Finally, there are numerous pieces of material evidence, which were admitted into the case file, that indirectly prove that there was no training camp on Pajzoš, and that at that time the Military Administration of the City of Ilok, which was established at the end of 1991, was asked about everything, which lasted until the second half of 1992.

117. There are numerous pieces of evidence that the Military Administration of the City of Ilok decided about all issues in the said territory. Thus, the Military Administration of the JNA

[137] OFS-27, tt. 03 September 2020, p. 21;
[138] [redacted];
[139] [redacted];
[140] [redacted]

for the Municipality of Ilok first offered and concluded an agreement on the surrender of weapons in the Municipality of Ilok by all armed persons and obliged the MUP to remove mines and explosive and other obstacles in the city of Ilok and surrounding towns, Bapska and Šarengrad, that all persons who wish can move out, and that the JNA undertakes to ensure personal and property security of all citizens who remain in this area.[141]

118. Further, all requests regarding the settlement of Ilok and its surroundings were resolved by the Military Command.[142] From the letter that the Command of the City of Ilok sent to President Goran Hadžić on 25 December 1991 it can be clearly and unequivocally concluded that in the City of Ilok, as well as in the towns of Šarengrad, Mohovo, Opatovac, Bapska and Lovas, there is a Military Administration, which decides on all important issues.[143] The Military Administration decides on all issues and problems of civilian life and military issues in this area.[144]

119. That the Military Administration continued to resolve all civil and military issues in 1992 in this area, testifies the regular daily report of the Command of the City of Ilok dated March 14, 1992.[145]

120. The Military Command in this area controlled and issued permits regarding movement on the ground in the area of Ilok and its surroundings. They also decided on all issues concerning the situation on the territory with the obligatory mediation of JNA liaison officers. Thus, the observers of the European Union Peacekeeping Mission could also not move freely on this terrain without the announcement of the JNA liaison officer.[146]

121. From the stated material evidence, it can be indirectly established in an undoubted way that in March or April 1992, no one outside the JNA could organize or conduct any training.

---

[141] P02607; 2D00099;
[142] 2D00005;
[143] 2D00102;
[144] P03321;
[145] P03759;
[146] 2D00006;

122. Having all this in mind, and having in mind the testimonies of the above-mentioned witnesses, it is clear that no reasonable Trial Chamber could conclude that there was a training camp on Pajzoš, just as no reasonable Trial Chamber could beyond reasonable doubt establish that the DB of Serbia had anything to do with any military training.

Sub-ground 2(4)

123. The Trial Chamber erred in facts and in law when it established that a group of 20 persons from Bosanski Šamac was trained by members of the Unit at Ležimir and Pajzoš, as stated in paras. 416 and 418.

124. Simatović Defence has already given arguments that there is no evidence that there was any training camp on Pajzoš. As far as Ležimir is concerned, it is on the territory of the Republic of Serbia, and neither Witness Todorović nor Witness RFJ035 testify that this group before leaving for Bosanski Šamac trained in the area of Ležimir. Therefore, also this finding of the Trial Chamber contradicts the allegations from paragraphs processed above.

125. [redacted].[147] [redacted].[148]

126. With regard to the finding of the Trial Chamber that members of this group received training by Unit members, the Chamber again relies solely and exclusively on the testimony of Witness RFJ-035[149], without these allegations of an uncredible and unreliable witness being based on any other evidence.

127. It is indicative that the Trial Chamber draws a conclusion about this fact, and that apart from Witness RFJ-035, there is not a single other witness who would confirm these allegations,

147 [redacted];
148 [redacted];
149 Judgement, 30 July 2021, para. 416, fn. 1670;

nor is there a single item of material evidence, i.e. a document that would support this Witness in this part. The Trial Chamber was therefore wrong both in facts and in the law because for a fact to be considered established beyond a reasonable doubt it is necessary for it to be corroborated by two or more pieces of evidence. At the same time, the issue of the reliability and credibility of Witness RFJ-035 should not be forgotten, which additionally strengthens this argument of the Simatović Defence.

Sub-ground 2(5)

128. The Trial Chamber erred in facts and in law when it established that Lugar, Debeli and RFJ-035 were trained by Unit members as stated in para. 416.

129. As Simatović Defence elaborated in the previous Sub-ground, there is no evidence on the basis of which it could be concluded beyond a reasonable doubt that Unit members of the DB of Serbia participated in the training of the group, which was transferred to Bosnian territory by military helicopters in April 1992 to the region of Bosanski Šamac.

130. At this point Simatović Defence wishes to refer the Appeals Chamber to the fact that there is evidence in the case file that indirectly proves that in the area of Pajzoš there were no instructors who belonged to the DB of Serbia, but that there was a special unit of the RSK Krajina MUP in Pajzoš, which, among other things, had a Forward Command Post (IKM) in the area of Pajzoš, where training was held by instructors of the RSK MUP.[150]

131. In addition, there are the Reports of the Special Purpose Unit of the RSK MUP dated 19 June 1992 and 21 June 1992[151] from which it can be seen that the members of this Unit in the area of Ilok and surrounding places also performed control and patrol activities.

132. So, from the offered evidence, it can be seen that the headquarters of the Special Purpose Unit of the RSK MUP was in Ilok, and that an IKM was located in the area of Pajzoš.

[150] P03238;
[151] P03240; P03241;

There is no evidence in the case file that this IKM of the Special Purpose Unit of the RSK MUP was at the same location as the Intelligence Centre of Tito's Villa on Pajzoš.

133. These facts, and having in mind the testimony of Witness Todorović, which we analysed in detail before, [redacted].

134. Finally, Simatović Defence notes that in its Final Trial Brief dated 12 March 2021, it devoted attention to the Report of the Unit for Antiterrorist Activities (JATD) of the RDB of the Ministry of the Interior of Serbia dated 1 February 1994 from which it can be seen that in the area of Ilok there was also a unit that presented itself as a Unit of the "Red Berets". That unit tried to present itself as a unit that maintains ties with the Serbian MUP. A special report on the activities of members of this unit during 1992 and 1993 was prepared by Dragoslav Krsmanović, Assistant Commander of the JATD.[152]

Sub-ground 2(6)

135. The Trial Chamber erred in facts and in law given that it inconsistently and contradictorily treats a group of persons transferred to Batkuša by a JNA helicopter as a paramilitary group in para. 215, as not a formal part of the Unit in para. 416 and as Unit members in para. 417.

136. The Defence has already stated that the Trial Chamber is not consistent in establishing the facts that are crucial for determining the responsibility of the defendant. Simatović in this case.

137. For the Defence, it is not under dispute that there was one SRS group from Kragujevac of thirty volunteers, which included Dragan Đorđević - Crni, Srećko Radovanović - Debeli,

[152] 2D00143; [redacted];

Slobodan Miljkovic - Lugar, Aleksandar Vuković - Vuk and others. It is also undisputed for the Defence that about 20 young men, locals from Bosanski Šamac, were sent for military training to the SBWS area. Further, for the Defence it is not disputed that these 30 SRS volunteers from Kragujevac and 20 locals from Bosanski Šamac joined a group of 50 persons, which was transferred to Batkuša, Bosanski Šamac Municipality, by military helicopters around mid-April 1992.

138. The Defence will, as before, also in the continuation of this appeal, label this group of persons simply as a "group".

139. Of key importance for this case, among other things, is to determine the affiliation of this group to an organization, i.e. institution, either from Serbia or from SBWS.

140. However, with regard to this key fact, the Trial Chamber did not show consistency, i.e. has not unequivocally determined to whom this group belongs, i.e. The Trial Chamber did not determine the status of this group of people before this group subordinated to the 17th JNA Tactical Group (TG), which was the main and dominant force in Bosanski Šamac Municipality.

141. In this respect, the Trial Chamber demonstrates inconsistency and contradiction in its judgment in such a way that first in para. 215 it treats this group as a "paramilitary group". In doing so, as a basis for such a finding, the Trial Chamber refers to witnesses RFJ-035, Todorović, Tihić, Lukač, RFJ-125 and Đukić.[153]

142. Further, in para. 416 of the Judgment, the Trial Chamber now finds, that the 20 locals from Bosanski Šamac were not formally incorporated into the Unit, referring to the testimony of Witness RFJ-035, whose testimony was referred to by the Trial Chamber even when it labelled this group as a "paramilitary group".[154]

143. Finally, in para. 417 of the Judgement, the Trial Chamber now treats the entire group, both the 30 volunteers from Serbia and the 20 locals from Bosanski Šamac, as Unit members,

[153] Judgement, 30 July 2021, para. 215, fn. 963;
[154] Judgement, 30 July 2021, para. 416, fn. 1669;

again based on the testimony of RFJ-035, as the only evidence of this fact.[155] It is not clear to the Defence what the final finding of the Trial Chamber is, whether this whole group is a "paramilitary group", whether this whole group are "Unit members", whether some of them are a "paramilitary group" and some are "Unit members"? The contradiction and inconsistency of the Judgment with regard to this important issue is therefore obvious.

144. At this point, Simatović Defence notes that the Trial Chamber, and solely on the testimony of Witness RFJ-035, also concluded that it was established beyond a reasonable doubt that he and his group, including Lugar and Debeli, became Unit members and received uniforms with similar insignia to the military uniform worn by Simatović at the Camp.

145. There is not a single other piece of evidence that Simatović was ever present in the camp where this group allegedly trained. There is no support for such a claim of Witness RFJ-035 either in the testimony of another witness or in any other material evidence admitted in this case.

146. [redacted][156]

147. No reasonable Trial Chamber could conclude beyond a reasonable doubt that Simatović was present in the camp where this group of people trained, and that he wore the same uniform as this group of people.

Sub-ground 2(7)

148. The Trial Chamber erred in facts and in law when it established that Simatović had authority over the Unit and the camps Ležimir and Pajzoš and that he was familiar with and

[155] Judgement, 30 July 2021, para. 417, fn. 1672;
[156] [redacted];

agreed with the arrangements for the training of persons sent to Bosanski Šamac, as stated in para. 418.

149. In its Final Trial Brief, the Defence provided numerous pieces of evidence about the reasons why Franko Simatović went to Pajzoš and stayed there occasionally.[157]

150. The Pajzoš site was extremely suitable for observation, given the configuration of the terrain.[158] [redacted].[159]

151. [redacted].[160] [redacted].[161] [redacted].[162] In its appeal so far, the Defence has referred the Appeals Chamber to witnesses who testified that the surroundings of these facilities were mined.

152. [redacted].[163]

153. [redacted]

157 [redacted];
158 tt. OFS-027, 1 September 2020, p. 30; tt. RFJ-144, 24 January 2018, p. 49; 1D00384, para. 54;
159 [redacted] tt. OFS027, 1 September 2020, p. 30;
160 [redacted];
161 [redacted]
162 [redacted];
163 [redacted] tt. OFS-027, 1 September 2020, p. 32; tt. RFJ-144, 24 January 2018, p. 50;

[redacted].[164]

[redacted].[165]

154. [redacted]

[redacted][166] [redacted].[167]

Training on Pajzoš was not possible, because it was a place that was spatially limited, intersected by vineyards, and precisely for these reasons, combat training was not possible.[168]

[redacted].[169]

155. In the period from December 1990 to May 1992, Franko Simatović was at the very bottom of the hierarchy of the SDB of the MUP of Serbia and was only Chief of a Section at the Belgrade Administration Centre. Simatović was as many levels of management below the level of the Chief of the Service.[170] In this position,[171] In this position, Franko Simatović had the responsibility for detecting, monitoring, researching, documenting, as well as preventing the activities of intelligence services and other security challenges, and he did not have any combat duties.

156. It was indisputably established in this case that Simatović's qualifications were that he had completed the Higher School of Economics, and that he did not have any military knowledge and capabilities, nor did he have the knowledge and abilities to conduct any kind of military training.[172]

157. [redacted]

---

[164] [redacted] 1D00384, para. 54;
[165] [redacted]; [redacted]; tt. OFS-018, 19 November 2019, p. 65;
[166] [redacted]; 1D00384, para. 55;
[167] [redacted];
[168] 1D00384, para. 55;
[169] [redacted]; [redacted]; 1D00384, para. 55; [redacted];
[170] 2D00451, para. 410-411;
[171] 2D00451, para. 398;
[172] [redacted];

[redacted].[173] [redacted]

[redacted].[174]

Simatović also dealt with finding technical solutions, that would be more successful in collecting intelligence data[175] which is why he often visited technical exhibitions where various listening devices for the police and the army were shown.[176]

158. At this point, it should also be noted that Simatović did not have any possibility of independent deciding and independent decision-making in the positions to which he was assigned during the period relevant to the Indictment.[177]

159. [redacted].[178]

160. [redacted].[179]

161. Witness RJS-012 testified that Simatović came to Pajzoš and that he spent all his time in the villa where the electronic equipment was located.[180] In the villa where Franko Simatović stayed, there was electronic reconnaissance equipment, which was the main subject of Simatović's interest. Witness RJS-012 does not know in what capacity Simatović came to Pajzoš, but he only saw him in and around this facility with electronic equipment.[181]

---

173 [redacted];
174 [redacted];
175 tt. OFS-027, 1 September 2020, p. 46;
176 tt. OFS-027, 1 September 2020, p. 47;
177 [redacted]; 2D00451, para. 416;
178 [redacted];
179 [redacted];
180 1D00385, p. 137-138;
181 tt. RFS-012, 03 October 2019, p. 15;

162. Witness Obrad Stevanović saw Franko Simatović on Pajzoš two or three times.[182] The Witness says that it was in the period from August to the end of 1995. The Witness added that he saw him at the Pajzoš location where the technical equipment was stationed and that the place was near the Croatian border with Serbia.[183]

163. From everything stated above, it is completely clear that Simatović's visits to Pajzoš are related exclusively to the radio reconnaissance centre and that they are directly related to the cooperation that existed between the Second and the Seventh Administration of the RDB of Serbia. In addition to being a radio reconnaissance centre, Pajzoš was also a place of interaction between the operatives of the two Administrations, who were there on the same task - gathering intelligence and processing it.

164. All the evidence listed above develops a strong suspicion, and a reasonable suspicion that Franko Simatović had any authority over the Unit and the alleged camps on Ležimir and Pajzoš. Therefore, it is also impossible to establish beyond a reasonable doubt that Franko Simatović was acquainted at all, or worse, agreed with some arrangements regarding the training of the group that was sent to Bosanski Šamac, as is also stated in para. 418 of the First Instance Judgement.

Sub-ground 2(8)

165. The Trial Chamber erred in facts and in law when it established that Simatović was aware that by allowing persons sent to Bosanski Šamac to use facilities and trainers he would be supporting military actions and in the context of the conflict at the time, the commission of crimes by these forces, as stated in para. 418.

166. Simatović Defence again here refers to the argumentation, which it gave in the previous Sub-ground, and claims that there is no reliable evidence that Franko Simatović was at all in a position to decide, i.e. that he had the authority to authorize a group sent to Bosanski Šamac to use facilities and trainers.

[182] tt. OFS-021, 01 October 2020, p. 41;
[183] tt. OFS-021, 23 September 2020, p. 35;

167. The Defence claims that Simatović was not aware that that group would support military actions in Bosanski Šamac, and least of all that the group would commit crimes there.

168. It is noticeable that the Trial Chamber in this paragraph relies on an excerpt from Mladic's diary, which was made in real time and on the basis of reliable data, and which Mladic, then a member of the JNA himself, certainly had. Namely, Mladic recorded in his Diary the words Stevan Todorović uttered at a meeting held in 1992, at which Stevan Todorović says that he knew Colonel Slobodan Jeremić and General Bajić and that he sent 18 people to Ilok for training and that they were transferred to Bosanski Šamac by military helicopters on 18 April 1992, together with 30 volunteers from Kragujevac, among whom, according to him only two were members of the Serbian MUP.[184]

169. From this evidence, to which the Trial Chamber refers, the conclusion that the Trial Chamber draws could by no means be drawn. Namely, in 1992, when he did not know that he would be arrested for war crimes, and of course when he did not know that he would have to make a Plea Agreement with the Prosecutor's Office, Stevan Todorović claims that he agreed the training of locals from Bosanski Šamac with members of the JNA, Colonel Jeremić and General Bajić, and that they obviously went for training in Ilok, and not to Pajzoš or Ležimir.

170. What is also very indicative is that Stevan Todorović calls the 30 volunteers from Kragujevac volunteers, and not members of a unit of the DB of Serbia unit.[185]

171. Finally, Todorović says that only two persons, Đorđević and Vuković, were members of the Serbian MUP, and not of the DB of the Serbian MUP.[186]

172. However, in the same paragraph the Trial Chamber, states that in the light of Stanišić's and Simatović's authority over the Unit and the Ležimir and Pajzoš Camps, the Trial Chamber can only conclude that they were aware and consented to this Agreement.

[184] P01938, p. 256-257;
[185] P01938, p. 257;
[186] P01938, p. 257;

173. It is also noticeable that this conclusion of the Trial Chamber does not rely on any evidence and that there is no footnote pertaining to such a claim that would indicate on the basis of which item, i.e. which items of evidence the Trial Chamber establishes Simatović's authority over the Unit, i.e. over camps Ležimir and Pajzoš.

174. It is obvious, therefore, that the Trial Chamber is engaged in speculation at this point. Namely, the Trial Chamber did not clearly establish that Simatović had any authority over this group, which the Trial Chamber calls the Unit, and in particular there is no evidence, i.e. the Trial Chamber does not offer evidence that Franko Simatović had authority over the alleged camps at Ležimir and Pajzoš.

175. The most obvious speculation is in fact the conclusion of the Trial Chamber that Simatović was familiar with that arrangement for the above reasons and that he agreed to that arrangement.

176. The above-emphasized evidence in the form of Mladic's Diary and numerous other pieces of evidence offered by the Simatović Defence in its Final Trial Brief in Part 11 clearly show that the arrangement regarding the training of this group and its sending to Bosanski Šamac was completely beyond Simatović's knowledge and influence, even interest. There is not a single piece of evidence to show that Simatović knows about this arrangement with the JNA, that he agrees to this arrangement or that he cedes the facilities.

177. Even if Franko Simatović knew that the JNA was training a group of volunteers near Pajzoš and even if he ever came to the place of their training does not mean in itself that he supported their participation in potential crimes, which Simatović Defence will discuss in the text of the Appeal that follows.

178. This claim of Simatović Defence is supported by the fact that the Serb forces before, during and after the outbreak of the conflict in Bosanski Šamac numbered 6,700 members.[187] Given this large number of Serb forces, it is clear that a group of 50 volunteers cannot play a significant role, nor can they represent a significant force, and therefore the only conclusion is

[187] P01938, p. 254;

that no one could have guessed that in this context they could commit crimes unhindered or unpunished.

179. Finally, it is completely unclear what the Trial Chamber considered in the context of the conflict at the time, which also remained unclear.

180. The Trial Chamber had to state clearly and unambiguously which precise evidence confirms that Simatović was aware and knew the facts that represent the context of the conflict, necessarily leading to this group committing crimes in Bosanski Šamac.

Sub-ground 2(9)

181. The Trial Chamber erred in facts and in law when it established that Debeli, Lugar and RJF-035 incorporated into the Unit following their training by the Unit at the camps, and that they became new members of the Unit as stated in paras. 419 and 424.

182. In the previous Sub-ground, Simatović Defence analysed in detail the entry from Mladić's Diary from the meeting where Stevan Todorović spoke about the group that came to Bosanski Šamac in April 1992 by JNA helicopters. The Defence also points out here that Todorović does not treat either Debeli, Lugar or RJF-035 as members of the Unit. For Todorović, in 1992, when what he said was certainly more reliable than what he said as an accused, they were only volunteers from Kragujevac, not Unit members.[188]

183. [redacted].[189]

[188] P01938, p. 257;
[189] [redacted];

184. Srećko Radovanović Debeli and Dragan Đorđević Crni were members of the SRS. Srećko Radovanović Debeli was a Chetnik duke and had Chetnik ID card number 2, while Vojislav Šešelj had Chetnik ID card number 1.[190] Debeli never mentioned that he had anything to do with the DB of Serbia, on the contrary, he despised everything that was not Šešelj's ideology.[191]

185. When he became the Chief of Staff of the Posavina Brigade, after arriving in Bosanski Šamac, Debeli sent all the proposals for promotions to the Commander of the SRS War Headquarters. Debeli proposed platoon commanders in the Kragujevac Chetnik detachment for extraordinary promotion. This proposal also applied to RFJ035.[192] It is clear from numerous pieces of evidence that in June 1992 neither Debeli nor RFJ035, were a special unit of the DB of Serbia, but a Chetnik Detachment of the SRS, which the party's War Headquarters sent to the battlefield and gave promotions to members of the Detachment.

186. Just as Debeli and RF-J035 were never members of the Unit of the DB of Serbia, neither was Slobodan Miljković Lugar.

187. Witness RFJ-075 knew that Slobodan Miljković Lugar and Srećko Radovanović Debeli were in Šešelj's unit, which was commanded by Crni.[193]

188. [redacted]

[190] 2D00373, p. 44; p. 47-48; p. 50;
[191] 2D00373, p. 48;
[192] P01709;
[193] P01694, p. 47-48;
[194] [redacted];

[redacted][195] Slobodan Miljković Lugar is also part of the security staff of SRS president, Vojislav Šešelj during his stay in Kragujevac.[196] Finally, Slobodan Miljković Lugar, in a letter sent to the DB Centre in Kragujevac, describes his war path in detail. Lugar does not mention by a single word that he was in the Unit of the DB of Serbia, nor that he cooperated with anyone from the DB of Serbia, which he surely would have done if he had really ever been a member of a special unit of the DB of Serbia.[197]

189. Belgrade daily "Večernje novosti" published on 25 November 1992 a text about volunteers from Bosanski Šamac. "Večernje novosti" write in real time about Dragan Đorđević Crni and his group, and not about the Unit of the DB of Serbia. In this text, Dragan Đorđević Crni and Slobodan Miljković Lugar are addressed as Chetnik bandits.[198]

190. In December 1991, Slobodan Miljković Lugar was a volunteer in the SBWS Territorial Defence (TO) which was confirmed by the then TO Commander, Radovan Stojičić Badža.[199] [redacted].[200] Had Slobodan Miljković Lugar really been a member of the DB of Serbia, these Motorolas would have been part of the equipment he charged and there would be no need for the Commander of the Posavina Brigade to issue him a certificate that he can transfer these Motorolas to the FRY and hand them over to the owner, i.e. the DB of Serbia. It is clear from this document also that Slobodan Miljković Lugar has nothing to do with the DB of Serbia, which is why the Commander of the Posavina Brigade issues him a special document, which will justify the carrying of these devices, which are the property of the DB of Serbia.

---

195 [redacted];
196 1D00862;
197 P02040;
198 P02761;
199 P02047;
200 [redacted];

191. That members of the SRS volunteer Detachment were not members of the special unit of the DB of Serbia is indirectly stated by certain files from the Captain Dragan Fund.

192. In the file of Dušan Jovićić, at the place where the date and place of joining the unit, the name of the unit and the name of the unit commander are entered, it is stated that he joined the unit on 5 April 1992, as a reservist in the Posavska Brigade in Bosanski Šamac, and that the unit Commander was Major Srećko Radovanović Debeli.[201]

193. The file in the "Captain Dragan Fund" for Petković Ljubiša, in the part referring to the date and place of joining the unit, the name of the unit and the unit commander states that he joined the unit on 1 April 1992 via the SRS in Kragujevac, that the unit was called "Grey wolves" - Bosanski Šamac, and that the unit Commander was Srećko Radovanović.[202]

194. At this point, Simatović Defence wants to refer the Appeals Chamber to the testimony of Witness Stevan Todorović, who testified that he did not remember that these volunteers had any emblems when he visited them in the training camp, but that he actually saw the "Grey Wolf" emblem only after they returned to Bosanski Šamac and stayed there.[203]

195. [redacted].[204]

196. The only reasonable conclusion that can be deduced from the body of facts is that the volunteers who arrived in Bosanski Šamac were members of the Kragujevac Chetnik Detachment of the SRS and under the control of the SRS War Headquarters, which was subordinated to the 17th TG JNA, even before arriving at the area of Bosanski Šamac, when they were transferred from the JNA camp by JNA helicopters to Bosanski Šamac. No reasonable fact assessor can label this group of volunteers as a unit of the DB of the MUP of

[201] 2D00164, p. 2;
[202] P02032, p. 2;
[203] P01916, p. 17;
[204] [redacted];

Serbia. The responsibility of the members of this group, which was formed by the SRS, and which is part of and under the command of the JNA, cannot in any way be attributed to the DB of the MUP of Serbia.

Sub-ground 2(10)

197. The Trial Chamber erred in facts and in law when it established that Simatović gave approval for the group to leave for Bosanski Šamac, and that their deployment was authorized by Simatović, as stated in para. 419.

198. The ease with which the Trial Chamber ignores the numerous pieces of evidence on the basis of which it is indirectly proven that Debeli, Lugar and Witness RFJ-035 never became Unit members is unbearable.

199. On the other hand, the Trial Chamber misinterprets the evidence on the basis of which it finds that these three persons were nevertheless incorporated into the Unit in March 1992 and that they were under the authority of the Accused prior to their deployment.

200. Namely, the Trial Chamber acknowledges that it had in mind numerous pieces of evidence indicating that these individuals and Crni had close affiliations with the Serbian Radical Party and its War Staff, but nevertheless concludes that these numerous pieces of evidence do not call into question their affiliation with the Unit at the time.[205]

201. In support of its findings, the Trial Chamber refers to documents and testimonies in footnotes 1678 and 1679, that point to evidence on which the Trial Chamber drew such an important conclusion.[206]

202. Footnote 1678 emphasizes numerous pieces of evidence from which it can clearly be concluded that the mentioned persons Debeli, Lugar and RFJ-035, as well as Đorđević, are the subject of interest and monitoring of the DB of Serbia on the basis of Serbian extremism. [redacted]

[redacted]

[205] Judgement, 30 July 2021, para. 419;
[206] Judgement, 30 July 2021, para. 419, fn. 1678 and 1679;

[redacted][207]

The report was compiled in October 1995 by DB Kragujevac and sublimates the period relevant to this indictment. It is also apparent that this report also covered 1992. The report was prepared long before the establishment of the ICTY and the indictments, and is an internal document of the DB of Serbia, which means that no information was hidden, given that the document did not leave the Department. It is indicative that not a single word mentions anywhere that Srećko Radovanović Debeli was ever incorporated into the Unit.

203. Also, when it comes to Slobodan Miljković Lugar, DB Centre Kragujevac in its document of 29 July 1995 treats him as a member of Radovanović's group, which was within the SRS. This document, which also sublimates the period up to July 1995, and covers 1992, states that Slobodan Miljković Lugar is a member of SRS paramilitary formations. [redacted][208]

204. [redacted][209]

205. So, a direct eyewitness who even knew the nicknames of Lugar and Debeli, as well as the fact that their commander is Crni, testified that it was Šešelj's unit, and not the DB of Serbia. There is a lot of evidence that correlates with the evidence highlighted by the Defence at this point, which is listed in more detail and analysed in the Defence's final submission.

207 [redacted];
208 [redacted];
209 [redacted];

206. These numerous clear and solid pieces of evidence were opposed by the Trial Chamber exclusively and solely on the testimony of Witness RFJ-137.[210]

207. However, the Trial Chamber completely misinterprets even this only piece of evidence, and takes parts of the testimony of witness RFJ-137 out of context, all with the intention of providing any kind of evidence for the claim that Simatović gave his approval for the group's departure to Bosanski Šamac.

208. First of all, it should be pointed out that Witness RFJ-137 does not testify about this group and Bosanski Šamac at all. The witness does not know about this group, he does not know about leaving to Bosanski Šamac, nor does he know anything about the arrangement for sending this group, i.e. the giving of approval to send that specific group to Bosanski Šamac.

209. The Trial Chamber uses the testimony of Witness RFJ-137 as circumstantial evidence, i.e. as evidence on the basis of which it will draw a completely erroneous conclusion.

210. The Trial Chamber thus, has no direct, immediate evidence for its finding that Simatović gave approval for the departure of the group to Bosanski Šamac, but it draws a conclusion from the testimony of one witness about an unrelated, completely different event. It is obvious that the first instance court erred in both facts and law.

211. [redacted].[211]

212. So, this witness was not in the unit in March and April 1992, nor was he at all in the area where this group was allegedly training and preparing to go to Bosanski Šamac.

[210] Judgement, 30 July 2021, para. 419, fn. 1679;
[211] [redacted];

213. The incident mentioned in footnote 1679, when Jovica and Frenki allegedly came from Belgrade and were angry about the participation of the Witness's unit in the operation, does not pertain to this group of people, nor does it refer to the period when a group of people was allegedly trained and transported to Bosanski Šamac. If the testimony of this Witness is reliable, this happened at the end of 1991 or at the very beginning of 1992 with a unit that was not even formed, and it cannot be applied by analogy to an earlier or later period.

214. [redacted].[212]

215. [redacted].[213]

216. It is therefore obvious that the testimony of Witness RFJ-137, which the Trial Chamber cites and takes as a basis for its finding from para. 419 of the Judgment, even if fully true and admissible, relates exclusively to the period September 1991 - February 1992, which is why it can in no way be used as evidence in relation to the group that allegedly trained on Pajzoš and for whose departure to Bosanski Šamac Franko Simatović allegedly gave his approval.

Sub-ground 2(11)

217. The Trial Chamber erred in facts and in law when it established that Simatović requested a written report from Crni after the operation in Bosanski Šamac, as stated in para. 421.

218. The Trial Chamber comes to a completely erroneous and unfounded conclusion about the role of the Accused in the events in Bosanski Šamac, including evidence that Simatović requested a written report from Crni following the Bosanski Šamac operation. In reaching this conclusion, the Trial Chamber relies solely on the testimony of Witness Stevan Todorović.[214] In doing so, the Trial Chamber completely misinterprets the testimony in this part.

---

212 [redacted];
213 [redacted];
214 Judgement, 30 July 2021, para. 421, fn.1685;

219. Namely, the Simatović Defence will further explain why it believes that the request for a written report, which Simatović allegedly requests from Crni, cannot be any proof of Simatović's role in the events in Bosanski Šamac.

220. The Defence also points out at this point that Witness Todorović is an uncredible and unreliable Witness for the reasons set out in detail above. However, even if what Todorović testified was correct, the Trial Chamber misinterpreted it and fully misapplied.

221. [redacted].[215]

[redacted]

223. What is also very important is that when Witness Todorović was asked what the report was supposed to be written about, he answered that the topic of the report should be what was happening in the area where Crni spent some time, i.e. in the area of Bosanski Šamac. Here, too, it is obvious that this is not a report from a superior to a subordinate, or a report on the situation in the field Unit for which, according to the Trial Chamber, Franko Simatović would be responsible, but that an operative requests a report on the situation in the field from someone who had stayed in the field and who is most likely his collaborator or/and operative contact.

224. The Defence brought to the stand a police expert, who had done a written expertise, that was admitted to the case file.[217] The police expert explained in detail the methods, ways and procedure of gathering intelligence. He also explained that these methods are known to almost all services in the world.

---

215 [redacted];
216 [redacted];
217 2D00451;

225. In the phase of planning and organizing operative work, the Service of the DB of Serbia made a concrete choice of means and methods, which will be applied with the goal to collect data and information.[218]

226. In the planning and organizing phase, the goals and directions of operative work were determined, as well as resources of the Service that will be engaged in data collection in relation to selected persons, groups, organizations, facilities or areas.[219]

227. In the State Security Service, the term Agent is in accordance with the rules of operation of the SDB of Serbia included collaborators and operative contacts, who were not professionally related to the Service, but collected operative data for the needs of the Service.[220]

228. A collaborator is a person who knowingly obtains data for the needs of the Service, while an operative is a contact person who is willing to consciously, secretly and in an organized manner collect and provide data.[221]

229. In order to obtain, document and verify operational data, SDB operatives were authorized to conduct informative interviews with their positions.[222]

230. Further, the SDB of Serbia kept records of persons, organizations, facilities, actions, documentation, but also records of collaborators and operational contacts. Among others, these collaborators and operational contacts were deleted from the records when the need for further record keeping ceases. All data that lost significance, as well as data that were found to be incorrect or incorrectly entered, were also deleted from the records.[223] Records were kept by persons, both in the country and abroad.[224]

231. Finally, in the period from 1991 to 1995, the SDB of Serbia had funds for special expenditures, and funds among other things, for working with collaborators and operational

[218] 2D00451, para. 268;
[219] 2D00451, para. 269;
[220] 2D00451, para. 291;
[221] 2D00451, fn. 254 and 258;
[222] 2D00451, para. 306;
[223] 2D00451, fn. 310;
[224] 2D00451, para. 314;

contacts. Funds, of course, imply money and other gifts, which were given in the form of rewards and fees to collaborators and operational contacts, but also to other persons who provided data and knowledge of relevance to the Service. All this was regulated by the Instruction on the manner of use and control of the disposal of funds for special expenditures arising from the performance of the core activity of the SDB.[225]

232. All allegations made above by the Defence strongly undermine the Trial Chamber's finding that Franko Simatović, in requesting a written report from Crni, demonstrated his role in the events in the Bosanski Šamac Operation. No reasonable Trial Chamber could draw such a conclusion.

233. The Trial Chamber also erred in basing such a conclusion on Interview Report from July 1993 by Serbian State Security Service officials in which Lugar stated that he had been paid by the Serbian Ministry of Interior for a certain time during his deployment.[226]

234. [redacted].[227]

235. It is absolutely clear that there is more than a reasonable doubt about the connection of the above with Franko Simatović and the DB of Serbia, or that they were members of the DB of Serbia. Could Crni simply unilaterally cut off contacts with the Serbian MUP, if he were not just a mere collaborator or operational contact? Would Miljković have been issued an official ID card by SUP Bosanski Šamac if he had been a member of the DB of Serbia?

[225] 2D00451, para. 344;
[226] Judgement, 30 July 2021, para. 421, fn. 1686;
[227] [redacted];

Sub-ground 2(12)

236. The Trial Chamber erred in facts and in law when it established that training provided to new members of the Unit, the approximately 20 locals from Bosanski Šamac, and their deployment to Bosanski Šamac provided practical assistance that has a substantial effect on the commission of crimes, as stated in para 424.

237. With regard to the training of the group deployed to Bosanski Šamac, the Defence has already pleaded within the framework of Sub-ground 2(3), 2(4) , 2(5) , 2(7), 2(8) and 2(9), so here too it refers the Appeals Chamber to the arguments from the above-mentioned Sub-grounds.

238. Concerning the Trial Chamber's finding that the training was provided to the new members of the Unit, the approximately 20 locals from Bosanski Šamac and that their deployment to Bosanski Šamac provided practical assistance that had a substantial effect on the commission of crimes there, the Defence strongly opposes this conclusion and points out that the accused Simatović had no responsibility towards this group of people, both in terms of their training and equally in terms of their deployment.

239. The Defence reminds the Appeals Chamber that a Prosecution Witness, the Witness most quoted in this Judgment, Stevan Todorović, testified that Crni and the mentioned group came to Bosanski Šamac through General Bajić and Colonel Jeremić with the mediation of Prodanić from the Serbian MUP. So, at the meeting with Ratko Mladic, Witness Todorović stated the following: "I knew Colonel Slobodan Jeremić and General Bajić and sent 18 men to Ilok for training on 18 April 1992, they and 30 volunteers from Kragujevac were transferred using three helicopters…"[228]

240. [redacted]

[228] P01938, p. 247-249;
[229] [redacted];

[redacted][redacted][230] Simatović's Defence considers that what the Witness said in 1992 at the meeting with Ratko Mladic, and what Mladic diligently wrote in his diary, is much more relevant. Then, in real time, Todorović did not have to flatter anyone and had no reason to invent anything.

241. Witness Todorović, although he offered to assist the Prosecution in the cases where he will be called, still in his testimony in the Milošević case did not testify about any role of Franko Simatović - neither in the training of these volunteers, nor in the deployment of these volunteers to Bosanski Šamac. Namely, the Witness says that the second time, when he came to Belgrade, with the aim of visiting volunteers from Bosanski Šamac, he again looked up Milan Prodanić and asked him to tell him how to find these volunteers. As Prodanić did not manage to explain to him the way to Ilok, Prodanić told Todorović that some of their people, meaning members of the MUP, were going to that area and that he could follow them.[231]

242. [redacted][232]

243. The Defence claims that this statement in fact shows that Franko Simatović has nothing to do with the training of those people, and that it is obvious that he exited the car in front of the communication centre on Pajzoš, and that the training was a kilometre or more from Pajzoš. The Defence notes that there are only a few kilometres between Pajzoš and Ilok. It is natural that Franko Simatović as an intelligence officer knows the region and knows that there is some training camp in the area, but there is not a single piece of evidence that he has any connection with that camp.

---

230 [redacted];
231 P01916, p. 12:
232 [redacted]

244. The Defence, when it comes to the substantial importance of this group in committing crimes, wants to emphasize the following. Immediately before the outbreak of the armed conflict in Bosanski Šamac, Serb forces numbered 6,700 men.[233] The 17th Tactical Group from the 17th Corps of the JNA was located in Bosanski Šamac.[234]

245. The commander of the 17th Tactical Group formed 4 TO detachments. The 1st TO Detachment covered the village of Obudovac, the 2nd TO Detachment the village of Batkuša, the 3rd TO Detachment Pelagićevo, while the 4th TO Detachment covered the town of Bosanski Šamac itself.[235] TO detachments were armed from the JNA warehouse in the Posavina area.

246. [redacted].[237]

247. 30 volunteers from Serbia and about 20 locals certainly could not represent a substantial force in such an environment, in any sense.

Sub-ground 2(13)

248. The Trial Chamber erred in facts and in law when it established that members of the Unit and others trained by them at the end of March 1992 were deployed by Simatović and participated in the crimes in Bosanski Šamac, as stated in para. 436.

249. The Defence refers here also to the argumentation from the previous Sub-ground, also providing additional argumentation.

250. The 17th JNA Tactical Group, under the command of Colonel Nikolić, was the dominant force in the Bosanski Šamac area. The JNA, more precisely the commander of the

[233] P01938, p. 254;
[234] P01879; tt. OFS-07, 16 December 2019, p. 12;
[235] tt. OFS-07, 16 December 2019, p. 13, 14;
[236] [redacted];
[237] [redacted];

17th Tactical Group, formed, as already mentioned above, 4 TO Detachments and had about 6,700 men under him.

251. [redacted].[238]

252. [redacted].[239]

253. Further, JNA colonel Beronja, negotiated with Dragan Đorđević Crni about the engagement. Crni promised him that he would bring 350 to 400 men and that everything would go through General Bajić, Colonel Jeremić and the MUP of Serbia. (MUP of Serbia, not DB of Serbia).[240]

254. [redacted].[241]

255. Đorđević is therefore, all that time in direct contact and under the control of General Bajić, an aviation officer of the JNA. General Bajić participates, not only in bringing Đorđević Crni to Bosanski Šamac in April 1992, as also evidenced by an entry in Mladic's diary, but also participates in Đorđević's second visit to the Posavina area. General Bajić decides whether and how Đorđević should return to Serbia in the fall of 1992. The role of General Bajić is confirmed, in documents from 1992, by officers Beronja and Simić.

238 [redacted];
239 [redacted];
240 P01919, p. 3;
241 [redacted];

256. The Defence showed above that there is firm evidence that this group of volunteers had military training in the Ilok area, that they were transferred from Ilok to Bosanski Šamac by military helicopters, and that they were immediately resubordinated to the Commander of the 17th JNA Tactical Group, Colonel Nikolić. It is clear to any reasonable assessor of facts that Simatović, as an intelligence officer in the DB of Serbia, has neither the space nor the capacity to influence this deployment in any way.

257. In contrast to this strong evidence, the Trial Chamber relies solely on insinuations from the testimony of one apparently uncredible Witness, RFJ-035, which testimony it seeks to corroborate with unconvincing evidence, which could only indirectly insinuate some role of Simatović in the deployment.

258. For such a finding, the Trial Chamber would have to have solid evidence that does not cast reasonable doubt on Simatović's role in the deployment, and the Trial Chamber clearly does not have such evidence, which is why it erred in fact and in law in this regard.

Sub-ground 2(14)

259. The Trial Chamber erred in facts and law in paras. 604 – 608. The Trial Chamber erred in facts and in law when it found that specific direction is not an element of aiding and abetting liability under customary law and this issue is discussed in Sub-ground 4(1). The Trial Chamber also erred in finding that the principle of lex mitior is inadmissible, and this is discussed in Sub-ground 4(2) of this Appeal Brief. The Defence also refers the Appeals Chamber to the argumentation from the Simatović Final Trial Brief.[242]

260. At his point the Defence will only add couple of additional convincing sources to defence arguments in Sub-ground 4(1).

261. The Appeals Chamber in the *Aleksovski* case found that "*an aspect of the fair trial requirement is the right of an accused to have like cases treated alike, so that in general, the*

[242] Simatović Defence Final Trial Brief, 12 March 2021, Part 2, paras. 72-81;

same cases will be treated in the same way".[243] In this specific case, it is not an issue of two similar cases being treated differently, but that this is done in one and the same case.

262. The Rome Statute of the International Criminal Court unequivocally defines the necessary *mens rea* for aiding and abetting. Accordingly, in order for someone to be criminally responsible for aiding and abetting, it is necessary to establish that the accused acted with the aim of enabling the commission of crimes.[244] Since the Rome Statute was the subject of ratification by a large number of states, it is clear that it reflects the consensus of the International Community regarding the applicable *mens rea* for aiding and abetting. Acceptance of Article 25(3)(c) of the Rome Statute implies that the International Community has clearly established a standard that presupposes the existence of a purpose-goal as a necessary element of *mens rea*, and rejects the standard of "simple cognition" in determining responsibility for aiding and abetting.

263. The Defence has already presented its argumentation that the Trial Chamber erred when it found that Dragan Đorđevic Crni, Debeli and Lugar were Unit members, as stated in para. 604.

264. There is also numerous evidence by which the Defence clearly shows that it cannot be established beyond a reasonable doubt that Simatović organized the training of Unit members and local Serbs at the Pajzoš Camp, whereby he provided practical assistance, as is contained in para. 605.

265. The Trial Chamber has not proved beyond a reasonable doubt, as the Defence has already elaborated above, that Simatović undertook actions that had a substantial effect on the perpetration of the crimes, as stated in para. 605.

266. Finally, not a single piece of evidence confirms that Simatović knew that by his actions he aided in the commission of the crimes of persecution, murder and forcible displacement, as the Chamber erroneously establishes in para. 606 and para. 607.

[243] Aleksovski, Appeal Judgement, para. 105;
[244] Rome Statute, Article 25(3)(c);

Sub-ground 2(15)

267. The Trial Chamber erred when it found beyond reasonable doubt that Simatović was responsible for aiding and abetting the crimes of persecution, murder, deportation and forcible transfer committed by Serb forces in Bosanski Šamac, based on which it finds Simatović guilty of Counts 1 to 5 of the Indictment in relation to these crimes, as stated in para 608.

268. The evidence presented by the Trial Chamber in its conclusion does not prove beyond a reasonable doubt that Franko Simatović was responsible for aiding and abetting crimes of persecution, murder, deportation and forcible transfer committed by Serb forces in Bosanski Šamac. On the contrary, the evidence referred to by the Defence in its Final Trial Brief, as well as the evidence we have highlighted and analysed in this Appeal, strongly supports the Defence's view that on no basis is Simatović responsible for the crimes committed in Bosanski Šamac.

GROUND 3: ***The Trial Chamber errs in imposing on Simatović an excessive and inadequate sentence of 12 years of imprisonment***

Sub-ground 3(1)

269. The Trial Chamber erred in law and facts when Simatović was sentenced to 12 years in prison. The Trial Chamber misjudged the gravity of the offenses (paras. 617-621), individual circumstances (paras. 628-632) and comparison with other ICTY cases (paras. (633-634). These errors of the Trial Chamber are explained in more detail in Sub-grounds 3(2) to 3(9) These errors led to the imposition of a 12-year sentence on Simatović, which is excessive and inadequate and which in the case of a conviction should be replaced by a more lenient sentence.

Sub-ground 3(2)

270. The Trial Chamber misjudged the gravity of the offenses in the Simatović case. In Ground 2, the Defence deals in detail with the reasons why Simatović is not responsible for the acts for which he was convicted by the Judgment of the Trial Chamber.

271. As correctly stated, the Trial Chamber is obliged to take into consideration the particular circumstances of the case and the form and degree of the Accused's participation in the crime.[245] The Trial Chamber, however, does not analyse at all the circumstances that are important to take into account when deciding on the gravity of the offense.

272. The Trial Chamber only considers the consequences, the Trial Chamber states that citizens of Bosanski Šamac were exposed to criminal acts[246] and it states that a massacre happened in Crkvina.[247] The analysis of the gravity of the offense comes down exclusively to the analysis of the consequences of the offense.

273. The Trial Chamber had to analyse in detail what and how the Accused did in the context of the crime for which he was convicted. Simply put, Simatović was convicted of organizing

[245] Judgement para. 617
[246] Judgement para. 619,
[247] Judgement para 620

the training of a military unit and of deploying that unit to the battlefield.[248] The Trial Chamber finds no evidence that Simatović organized the training of the unit in the manner or with the intent to commit crimes, the Trial Chamber finds no evidence that Simatović deployed the unit to the battlefield to commit crimes, the Trial Chamber finds no evidence that Simatović commanded the unit when it was deployed on the battlefield. Therefore, the gravity of the offense is to be sought in Simatović's actions until the moment the unit is sent to the battlefield, his actions must be assessed, and those are the organization of training and deployment.

274. The Trial Chamber is obliged to assess the form and degree of Simatović's participation in the crime. The Trial Chamber does not do this. In paragraphs 617 to 621, there is not a single word about Simatović's conduct for which he was found guilty other than the general allegation that he aided and abetted crimes in Bosanski Šamac through the organization of training and deployment.

275. In paragraphs 619 and 620, the Trial Chamber concludes that these are grave crimes, but as Simatović did not directly commit those crimes, the Trial Chamber failed to establish what constitutes the gravity of the offense in relation to the Accused. By this omission, the Trial Chamber errs in law and fact in terms of sentencing.

Sub-ground 3(3)

276. The Trial Chamber established as an aggravating factor on Simatović's side the fact that at the time when the act was committed he was a Senior Intelligence Officer in the Second Administration of the Serbian State Security Service. The Trial Chamber establishes this fact erroneously.

277. The Trial Chamber finds that the training of persons sent to Bosanski Šamac begins at the end of March 1992.[249] The Trial Chamber finds that on 11 April 1992 these persons were sent by helicopter to Bosanski Šamac and placed under the control of the JNA.[250] So the organization of training and deployment ended on 11 April 1992.

[248] Judgement para 605
[249] Judgement para. 416
[250] Judgment para 417, 424, 605

278. At the time when the act for which Simatović was convicted was committed, Simatović was a Chief of Section in the Administration for the City of Belgrade.[251] It was not until 29 April 1992, with effect from 1 May 1992, that Simatović is transferred to the Second Administration of the State Security Department to the position of Deputy Chief.[252] Therefore, at the time of the crime, Simatović was not a "Senior Intelligence Officer in the Second Administration" but an operational officer, a Chief of Section in the Administration for the city of Belgrade, where the Section is the lowest organizational form in the Service and cannot be considered a senior position in the Service, which is explained in detail elsewhere in this Defence Appeal.

279. In para 628. the Trial Chamber erroneously concludes that Simatović was a Senior Intelligence Officer in the Second Administration at the time when the crime was committed and after that error erroneously concludes that Simatović had an authority that was abused.

Sub-ground 3(4)

280. The Trial Chamber states that they do not agree with the fact that Simatović had a low rank in the State Security Service and that this is not a mitigating circumstance as stated by the Defence.[253] Given that the crime for which he was found guilty was committed no later than April 11, 1992, the Defence finds that the argument that Simatović had a low rank is even more convincing and that it is a mitigating circumstance. As stated in Sub-ground 3(3), in April 1992 Simatović was an operative - Chief of Section in the Second Branch of the Administration for the city of Belgrade. There is no lower organizational unit or lower management level than the Section, of which Simatović was the Chief at the relevant time.[254] No reasonable trier of fact can rate Simatović's position in April 1992 differently than as low.

281. The Trial Chamber erroneously concluded that the conduct for which Simatović was found guilty was punishable under the SFRY Criminal Code. Since the Trial Chamber does not cite any source for this claim, the Defence does not agree with the allegation that the

[251] Judgement para. 351
[252] Judgement para352
[253] Judgement para. 629
[254] 2D00451 para. 410, 411

organization of training and deployment of a military unit is punishable under the SFRY Criminal Code.

Sub-ground 3(5)

282. The Defence considers that the Trial Chamber did not attach due weight to the mitigating circumstances as stated in para. 630 of the Judgment. The Trial Chamber enumerates mitigating circumstances but without explanation concludes that there is some limited weight in mitigation in them.

283. The Trial Chamber in particular had to bear in mind the conduct in detention and during the trial proceedings. Simatović has been participating in the proceedings against him that have lasted for almost 19 years, since March 2003, and always and on every occasion Simatović has unreservedly expressed his respect for the Trial Chamber and the Prosecution. It is especially significant that Simatović, unlike the other accused, was in the courtroom every day in the trial before the ICTY, and in the re-trial before the IRMCT. He was in the courtroom every day and not a single trial day was lost because of him. He was in the courtroom every day in two trials and by his presence demonstrated respect for the Trial Chamber, the international court, parties to the proceedings, and especially importantly, the victims who testified at these trials. The Trial Chamber did not give adequate weight to these circumstances.

284. The Trial Chamber also did not even give adequate weight to the Accused's age. The procedure against Simatović for the most serious crimes began in 2003, when Simatović was 53 years old. 19 years later, Simatović is (almost) 72 years old, the proceedings are not over yet, but 19 years of uncertainty, fear, courtroom effort, separation from family, almost 7 years of detention, these are factors that must be taken into account when assessing Simatović's age as a mitigating factor.

Sub-ground 3(6)

285. The Trial Chamber erred when it did not accept the overall length of the proceedings as a mitigating factor.[255] The Trial Chamber accepts that there are reasons to apply this mitigating factor in this case, stating *"At Simatović's age this (length of the proceedings) amounts to nearly a quarter of his life in a single criminal proceeding. This is indeed lengthy"*.[256] The Trial Chamber also notes that the length of the trial is a component of the ICTY Appeals Chamber's decision on a full retrial, whereby the Trial Chamber defines the reason why the trial lasts so long.

286. Thus, the Trial Chamber accepts that the length of the trial is mitigating, accepts that in this case the trial does indeed take too long, but does not accept its jurisdiction to weigh the effects of this mitigating circumstance on the sentence to be imposed: *"Bearing in mind that it was ICTY Appeals Chamber that made this decision, it is beyond the remit of this Trial Chamber to take it into account in sentencing, and the Trial Chamber, therefore, declines to do so"*.[257] The Trial Chamber hereby denies its own jurisdiction to impose a sentence and take into account aggravating and mitigating circumstances, which is the right and obligation of the Trial Chamber, and shifts the responsibility for taking into account the mitigating circumstance concerning the overall length of proceedings to the Appeals Chamber. By refusing to take this factor into account the Trial Chamber committed an error in law and an error in facts.

287. Simatović has been the subject of criminal proceedings before the ICTY and IRMICT since 2003, i.e. for a little less than 19 years. The duration of the procedure cannot in any way be attributed to Simatović - despite his age, effort, stress, illness, uncertainty, stigmatization due to the criminal proceedings against him. Not a single day, not a single trial hour was lost because of Simatović, in a situation where, from the age of 53 to 72, he is trying to prove under extremely difficult circumstances that he is not guilty of the acts he is charged with.

[255] Judgement para. 631; Reasons why the length of the proceedings is treated as a mitigating factor are presented in Simatović Defence Final Trial Brief paras. 1438 to 1444
[256] Judgement para. 631
[257] Judgement para. 631

288. The Defence finds that the Appeals Court should correct the decision of the Trial Chamber and take the overall length of the trial as a mitigating circumstance and impose a much milder sentence on Simatović.

Sub-ground 3(7)

289. The Trial Chamber did not accept the allegation of "limited freedom" that Simatović had during the period on provisional release as a mitigating factor because the Trial Chamber does not consider that this circumstance is one of the mitigating circumstances.[258] The Defence claims that the length of stay on provisional release in this case with strict restrictions on personal liberties is not a mitigating circumstance because the overall length of the proceedings is tied to the ICTY Appeal Chamber's decision to order full retrial.

290. Trial Chamber erred when it did not accept this circumstance as a mitigating circumstance. Simatović spent almost 9 years on a provisional release - he was not allowed to leave his place of residence, he had to report to the police station every day, he was without a passport for 9 years, he had to agree to unannounced visits at any time to check his actions. Simatović's personal freedoms were severely restricted for almost 19 years - either in detention or on provisional release under strict monitoring and severe restrictions on the freedoms and rights of citizens.

291. The fact that the ITCY Appeal Chamber ordered that a re-trial in no way affects the obligation and right of the Trial Chamber to evaluate the exceptionally long provisional release and the conduct of Simatović in that long period of time as a significant mitigating circumstance that far exceeded the "limited weight" as this circumstance was assessed in para. 603 of the Judgment.

Sub-ground 3(8)

292. The Trial Chamber stated that it had made a comparison with other ICTY cases and cited several examples of the comparison that had been made.[259] The case of Stanišić Župljanin

[258] Judgement para. 632
[259] Judgement para. 634.

is not adequate for comparison, given that it is a conviction in the JCE case where the JCE lasted more than four years and refers to numerous municipalities throughout Bosnia and Herzegovina.[260] Simatović was found guilty of events in one municipality for aiding and abetting, in a period of less than a month - from the end of March 1992 to 11 April 1992.

293. The case of Blagoje Simić is also incomparable because Blagoje Simić was convicted of criminal acts committed in the period from September 1991 to 31 December 1993. Blagoje Simić was convicted as the President of the Crisis Staff and later as the Mayor of the Municipality of Bosanski Šamac, as the first and most responsible man for all the events in Bosanski Šamac for a long period of time.[261] The sentences handed down in the Blagojević and Jokić case indicate that Simatović should have been given a much milder sentence, given that Vidoje Blagojević and Dragan Jokić were sentenced to 15 and 9 years, respectively, for aiding and abetting, but in connection with the crimes in Srebrenica in July 1995.[262]

294. However, the Trial Chamber fails to compare Simatović's sentence with the sentences imposed on Miroslav Tadić (8 years) and Simo Zarić (6 years)[263]. Miroslav Tadic and Simo Zarić were convicted of aiding and abetting in connection with the events in Bosanski Šamac, and the sentences imposed on them are directly comparable to the much milder sentence that should have been imposed on Simatović.

295. The Defence concludes that a comparison has not made with other ICTY cases with which this case can be adequately compared.

Sub-ground 3(9)

296. The Trial Chamber erred in law and facts when an identical sentence was imposed on both of the accused ignoring the difference in the position and role of these accused. At the time of the crime Jovica Stanišić is a Chief in the State Security Service.[264] Stanišić is at the head of the Service which is managed on the basis of strict application of the principle of subordination and where all employees of the State Security Service were bound to act as per

[260] Stanišić and Župljanin, Appeal Judgement, 30 June 2016
[261] Blagoje Simić Appeal Judgement, 28 November 2006
[262] Vidoje Blagojević and Dragan Jokić, Appeal Judgement 9 May 2007
[263] Simic, Tadic and Simic Trial Judgement, 17 October 2003
[264] Judgement para. 350

the orders and instructions of the Chief of the State Security Service.[265] The Trial Chamber had to take into account, along all other circumstances, the difference in the position of authority between Stanišić and Simatović, and impose a milder sentence on Franko Simatović.

[265] Judgement para. 334; 2D00451 paras. 229, 230, 414

GROUND 4: ***The Trial Chamber errs in interpretation of aiding and abetting applicable law and deciding on Defence Interlocutory Appeals***

Sub-ground 4(1)

297. In para. 601 of the Judgment, the Trial Chamber establishes *actus reus* elements of aiding and abetting liability under customary international law and concludes that the specific direction is not an element of this crime.[266] The Trial Chamber bases its decision on the decisions of the Appeals Chamber in cases Popović et al. Appeal Judgment and Šainović et al. Appeal Judgment.[267]

298. The Defence is aware that the recent decisions of the Appeals Chamber on the issue of specific direction of Judgment in the cases of Popović and Šainović are of the view that specific direction is not an element of aiding and abetting liability.

299. The Defence, however, does not accept this view for two reasons: the first reason is that it believes that there are clear sources of law indicating that specific direction is an element of aiding and abetting; the second reason is because it does not accept the hierarchy regarding the decisions of the Appeals Chambers of the International Tribunal.

300. With regard to the sources of law, the Defence will remind of some relevant sources. In the Tadić case, the Appeals Chamber *actus reus* for criminal liability for aiding and abetting states the following: "*The aider and abettor act specifically directed to assist, encourage or lend moral support to the perpetration of certain specific crimes (...) and this support has a substantial effect upon the perpetration of the crime.*"[268] Also the Appeals Chamber states that *actus reus* of aiding and abetting required a closer link between the assistance provided and particular criminal activities: assistance must be "specifically" – rather than "in some way" – directed towards relevant crimes.[269]

[266] Judgement para. 601
[267] Judgement para. 601 fn. 2352
[268] Tadic Appeal Judgement para. 229
[269] Tadic Appeal Judgement para. 229

301. In the case of Simić, the Appeals Chamber defines *actus reus* of aiding and abetting as "*acts directed to assist, encourage or lend moral support to the perpetration for a certain specific crime*".[270]

302. In the case of Orić, the Appeals Chamber concerning aiding and abetting in the context of omission liability states that "*omission must be directed to assist, encourage or lend moral support to the perpetration of a crime and have a substantial effect upon the perpetration of the crime*".[271]

303. In the case of ICTR Karera, the Appeals Chamber states that "*actus reus of aiding and abetting is constituted by acts or omissions that assist, further, or lend moral support to the perpetration of a specific crime*".[272]

304. In the case of ICTR Ntawukulilyayo, the Appeals Chamber states that "*actus reus of aiding and abetting is constituted by acts or omissions specifically aimed at assisting, encouraging or lending moral support to the perpetration of a specific crime*".[273] The Appeals Chamber in the case of Perišić concludes that Judgments of the Appeals Chamber in the cases of Tadić, Simić, Orić, Karera and Ntawukulilyayo effectively indicate that specific direction is an element of *actus reus* of aiding and abetting.[274]

305. In the case of Blagojević and Jokić, the Appeals Chamber has affirmed the definition of aiding and abetting from the Tadić case which includes the notion of specific direction as an essential element.[275] In the case of Milan Lukić and Sredoje Lukić, the Trial Chamber implicitly establishes the existence of practical assistance to the principle perpetrators.[276]

306. In the case of Perišić, the Appeals Chamber reaffirms that no conviction for aiding and abetting may be entered if the element of specific direction is not established beyond reasonable doubt, either explicitly or implicitly.[277] Also the Appeals Chamber clarifies that the element of

[270] Simić Appeal Judgement para. 85
[271] Orić Appeal Judgement para. 43
[272] Karera Appeal Judgement para. 321
[273] Ntawukulilyayo Appeal Judgement para. 214
[274] Perišić Appeal Judgement para. 29
[275] Blagojević and Jokić Appeal Judgement paras. 184-189,
[276] Milan Lukić and Sredoje Lukić, Appeal Judgement, Separate Opinion of Judge Agius para. 4, 6
[277] Perišić Appeal Judgement para. 36

specific direction establishes a culpable link between assistance provided by an accused individual and the crimes of principal perpetrators.[278]

307. In the case of Perišić in a Joint Separate Opinion, Judges Theodor Meron and Carmel Agius state "*Starting with the 1999 Tadić Appeal Judgement, the Appeals Chamber has always approached specific direction as an element of the actus reus of aiding and abetting*". In a Joint Separate opinion Judges Meron and Agius analyse specific direction in the context of *mens rea* and state "*We are satisfied that specific direction can also, as the Appeal Judgement's analyses demonstrated, be reasonably assessed in the context of actus reus*".[279]

308. The Appeals Chamber especially clarifies the importance of establishing specific direction in cases where the accused aider and abetter is removed from the relevant crimes, which is exactly the case in the case of Simatović. The Appeals Chamber states that where the aider and abetter is removed proving other elements of aiding and abetting may not be sufficient to prove specific direction and that in exactly such cases explicit consideration of specific direction is required.[280]

309. The Appeals Chamber also indicates factors of importance for establishing aiding and abetting liability such as factors of temporal or geographic distance.[281] The analysis of factors in the case of Perišić is especially important, where it is stated: the "*Appeals Chamber observes that in most cases, the provision of general assistance which could be used for both lawful and unlawful activities will not be sufficient, alone, to prove that this aid was specifically directed to crimes or principal perpetrators.*"[282]

310. *"Direct link between the aid provided by an accused individual and the relevant crimes committed by principal perpetrators is necessary"*[283] and which link does not exist between Simatović and the act charged against him. Simatović was convicted for allegedly organizing training of and subsequent deployment of a group of persons designated by the Trial Chamber as Unit members and local Serb forces.[284] Training and deployment, even if Simatović

[278] Perišić Appeal Judgement para. 37
[279] Perišić Appeal Judgement, Joint Separated Opinion of Judges Theodor Meron and Carmel Agius paras. 1, 2, 4
[280] Perišić Appeal Judgement para. 39
[281] Perišić Appeal Judgement para. 40
[282] Perišić Appeal Judgement para. 44
[283] Perišić Appeal Judgement para. 44
[284] Judgement para. 605

provided it, as the Defence otherwise denies elsewhere in this appeal, is a lawful activity that cannot in itself be the subject of criminal liability, and is not aimed at committing a crime. In this context, another significant factor is the fact that the persons who were allegedly trained, once deployed, were re-subordinated to the JNA immediately upon arrival in Bosanski Šamac during the ensuing war operations.[285]

311. Proper application of the law on specific direction in the Simatović case could result in an acquittal Judgment. That is why the legal clarification of the elements of aiding and abetting is of great importance for a fair and just procedure against Simatović. In this regard, it should be noted that the ICTY Trial Chamber in the case of Simatović found that the specific direction element is aiding and abetting, that two judges of the ICTY Appeals Chamber in the case of Simatović in Separate Opinions concluded that specific direction is indisputably an element of aiding and abetting[286].

312. Another reason pointed out by the Defence since it considers the Trial Chamber's position that a specific direction is not an element of aiding and abetting liability is unacceptable, is the fact that the Defence does not accept that there is a hierarchy between Judgments of different compositions of personnel of the Appeals Chambers of ICTY, ICTR or now IRMCT.

313. Each Judgment Appeals Chamber is a valuable source of law and there is no relationship of hierarchy, decisions and Judgments of greater and lesser importance, except in the specific situations to be discussed. The Appeals Chamber is a highest possible instance within the international court system and deviation from the decisions of the Appeals Chamber is possible only in untenable situations, such as a holding which is logically impossible or is demonstrated to be contrary to customary international law.[287] Numerous Appeals Chambers of the ICTY and ICTR in the period from 1999 to 2014 clearly demonstrated what international customary law is concerning specific direction.

[285] Judgement 422, 424
[286] Stanišić and Simatović Trial Judgement, Separate and Partially Dissenting Opinion of Judge Carmel Agius para. 6; Dissenting Opinion of Judge Koffi Kumelio A. Afande paras. 22-31
[287] Perišić Appeal Judgement, Joint Separated Opinion of Judges Theodor Meron and Carmel Agius paras. 4

314. The Appeals Chamber in the case of Šainović does not indicate anywhere in what the Appeals Chamber in the case of Perišić presented a position that is logically impossible or contrary to customary law. The Appeals Chamber in the case of Šainović *"unequivocally rejects approach in the Perisic Appeal Judgment"*[288] without a proper explanation why it finds that 15 years of jurisprudence of international courts, along with numerous sources from other jurisdictions, do not represent *"prevailing jurisprudence on the actus reus of aiding and abetting"*.

315. The concept of specific direction is not only part of customary international law, as has already been shown, but is also necessary from the standpoint of a fair and lawful determination of the guilt of the accused. Without the concept of specific direction, the responsibility of an accused would be too broad, without a clear criterion separating legal and illegal actions, which defines where the limit of responsibility of the act or omission is. The abandonment of this concept leads to legal uncertainty where the Simatović case and his conviction for aiding and abetting in connection with the events in Bosanski Šamac are a striking example.

316. For these reasons, the position of the Appeals Chamber in the case of Šainović is not binding on the Appeals Chamber in the case of Stanišić and Simatović, and there are all reasons for the element of specific direction as an element of aiding and abetting to be defined in the way done by the Appeals Chamber of the ICTY and ICTR in the period up to 23 January 2014.

Sub-round 4 (2)

317. In para. 601 of the Judgment, the Trial Chamber stated that it considers that the principle of *lex mitior* is not applicable in this case. The Trial Chamber did not offer any arguments for this view.[289]

318. In the case of Nikolić, the Trial Chamber states that "*the principle of lex mitior applies only to cases in which the commission of a criminal offence and the subsequent imposition of a penalty took place within one and the same jurisdiction*".[290]

[288] Šainović Appeal Judgement paras. 1650, 1651
[289] Judgement para. 601 fn. 2352
[290] Dragan Nikolić Trial Judgement para. 163

319. In the case of Nikolić, the Appeals Chamber accepts and defines the principle of *lex mitior* doing this as follows: "*The principle lex mitior is understood to mean that, if the law relevant to the offence of the accused has been amended, the less severe law should be applied. It is an inherent element of this principle that the relevant law must be binding upon the court*".[291] *The Appeals Chamber concludes that "in sum, properly understood, lex mitior applies to the Statute of the International Tribunal*".[292]

320. In the decision of the Appeals Chamber in the case of Nikolić it was confirmed that the principle of *lex mitior* is applied and that it is part of international criminal law. The procedural criminal law before this Tribunal are the Rules of Procedure and Evidence. The substantive criminal law used for trials before this Mechanism is the Statute of the Mechanism. The Statute in Article 1 refers to Articles 1 to 8 of the ICTY Statute where criminal offenses are established and forms of liability are defined in the basic elements. As the Statute provides only the basic features of criminal offenses, the legal practice of the Mechanism is essentially a substantive criminal law in the way it is understood in the countries of the civil law system. Legal practice of the Mechanism defines criminal offenses and forms of criminal responsibility. The best example is the Joint Criminal Enterprise, which is not defined by the Statute as a form of responsibility, and which is established as a form of responsibility in the Judgments of the Tribunal and the Mechanism. A change in the legal practice of the International Tribunal or the Mechanism as its successor is a change of the criminal law. According to the law that was valid until 23 January 2014, Simatović was not responsible for aiding and abetting because the Prosecutor did not prove the existence of a specific direction of this element of this form of liability. According to the law in force after 23 January 2014, Simatović was found guilty of aiding and abetting because the Prosecutor is no longer obliged to prove a specific direction because in the meantime the legal practice, with the effects of changing the substantive criminal law, has changed.

321. Therefore, according to the principle of *lex mitior*, which this Mechanism recognized as part of its legal system, Simatović must be subject to the law that is more favourable for him, the law that was valid until 23 January 2014 must be applied, according to which specific direction is an integral part of responsibility for aiding and abetting.

[291] Dragan Nikolić Appeal Judgement para. 81
[292] Dragan Nikolić Appeal Judgement para. 85

322. As during the proceedings against Simatović there were two specific legal perceptions, two legal perceptions of equal weight, with both legal perceptions expressed by the Appeals Chamber of the Tribunal, the law that is more favourable for him must be applied to Simatović.

323. In addition to the legal reasons for the obligation to apply the *lex mitior* principle referred to here, the fundamental rights guaranteed by the Statute oblige the Appeals Chamber to apply its own legal position, which was valid until 2014. Article 19 (1) of the Statute guarantees that all persons will be equal before the Mechanism. If Perišić had the right to having the law where the specific direction is a condition applied, that same right cannot be denied to Simatović.

324. Article 19 (2) of the Statute guarantees the accused the right to a fair hearing in the determination of charges against him. Article 19(4)(c) guarantees the accused to be tried without undue delay. Simatović was indicted in 2003 and his trial through no fault of his will not be completed before 2022. Had Simatović's trial before the Appeals Chamber been completed by 23 January 2014, Simatović would have been acquitted because until then, specific direction was a mandatory element of responsibility for aiding and abetting. As the trial was not completed by this date without his fault, the right to a fair trial justifies the application of *lex mitior* in deciding on his criminal responsibility.

325. Finally, the Defence is free to state that it believes that the historical responsibility of this Appeals Chamber is to confirm that specific direction is a crucial element of aiding and abetting responsibility and an important part of customary international law because the Simatović case is the last ICTY case which will be adjudicated before the IRMCT. This would correct the 2014 derogation and thus establish clear and unambiguous criteria of liability in this field of international criminal law.

Ground 4(3)(a)

326. The Trial Chamber erred in law and facts by making the "Decision on Simatović's Request for Video Conference Link for Witness Jovan Krstić (OFS-30)" of 20 August 2020 and by subsequently refusing Defence's request for certification to appeal making the

"Decision on Simatović's Request for Certification to Appeal Decision in Relation to Witness Jovan Krstić (OFS-30)" of 15 September 2020.

327. By its decision, the Trial Chamber affected fair conduct of the proceedings because expert graphologist Krstić was prevented from testifying directly before the Trial Chamber. Krstić is an expert graphologist and he is the only person who has had the opportunity to verify the authenticity of the signature on documents attributed to Simatović.

328. Krstić's expertise relates, among other, to document P00217 where Krstić, after analysing this document in point III of his Opinion, concluded that there is an indifferent probability of some 50% that Simatović personally signed this document.[293] The Trial Chamber, however, relies on this document and cites it as one of the pieces of evidence supporting its conclusions regarding the attack on Lovinac [294] which attack is otherwise also the subject of this complaint in Ground 1 (3).

329. The probability that Simatović is not the author of this document of 50% for any reasonable trier of fact should be sufficient to treat this document as uncredible. The Trial Chamber, however, prevented OFS-30 Krstić from testifying in relation to document P00217, and then used that document as undisputed evidence against Simatović. The Defence has every reason to believe that a direct hearing of Krstić, additional questions and clarifications that would be requested from him on that occasion, would lead to a different position of the Trial Chamber on this document.

330. The Trial Chamber's error is an error of law and facts and the Defence proposes that the Appeals Chamber concludes that it is an error and rectify the consequences of the error by stating that P00217 is not a document signed or made by Simatović.

Ground 4(3)(b)

331. The Trial Chamber erred in law and facts by issuing the "Decision on Prosecution Motion for Admission of evidence of witnesses RFJ-011 and RFJ-055 Pursuant to Rule 112"

[293] 2D00469 p. 16
[294] Judgement para. 27 fn. 57

of 24 September 2018 (confidential) and subsequently rejecting the Defence's request for certification to appeal by issuing the "Decision on Simatović Defence Request for Certification to Appeal Decision on Prosecution Motion for Admission of Evidence of RFJ-011 and RFJ-055 Pursuant to Rule 112" dated 12 November 2018.

332. The Trial Chamber by its decision of 24 September 2018 held that the testimony of RFJ-0111 and RFJ-055 would be in the re-trial admitted pursuant to Rule 112 given that the witnesses were deemed unavailable. The Trial Chamber ruled that the probative value according to the proposed evidence arising from their testimony would be the same, irrespective of whether in these proceedings it is admitted pursuant to Rule 111 or Rule112.[295]

333. The Defence argues that the Trial Chamber erred in concluding that the testimony of witnesses RFJ-011 and RFJ-055 had the same probative value as in the initial trial where they were admitted through Rule 92*ter*. Rules of Procedure and evidence made a clear distinction between the legal effects of Rule 111 and Rule 112 and extensive legal practice establishes that corroboration is necessity when evidence is to be admitted pursuant to Rule 112. By this decision the Trial Chamber deviates from the legal practice of the ICTY and introduces a new criterion where corroboration is not necessary if the witness has previously been cross-examined. By this decision, the Trial Chamber modifies Rule 112 by concluding that corroboration is not necessary if in a previous trial the witness was cross-examined, thus making an error in law, and consequently an error in facts.

334. The error of the Trial Chamber is an error of law and facts and the Defence proposes that the Appeals Chamber states the error and rectifies the consequences of the error by excluding from the case file the testimony of witnesses RFJ-011 and RFJ-055.

Ground 4(3)(c)

335. The Trial Chamber erred in law and facts by issuing "Decision on Prosecution Motion for Admission of evidence of Witness RFJ-084 Pursuant to Rule 111" of 6 June 2018 (confidential) because it subsequently denied Defence's request for certification to appeal by

[295] Decision on Prosecution Motion for Admission of Evidence of Witnesses RFJ-011 and RFJ-055 Pursuant to Rule 112" od 24 September 2018 (confidential) para. 5, 7

issuing "Decision on Simatović Defence Request for Certification to Appeal Decision on Admission of Evidence of witness RFJ-084" dated 25 September 2018.

336. [redacted][296] The Trial Chamber erred in failing to explain for which situations it could be said that they are "unavailable". The current practice and understanding of the term "unavailable" before the ICTY and MRICT is inconsistent with the interpretation of the Trial Chamber where a witness who refuses to testify is called "unavailable".

337. The Trial Chamber's error is an error of law and facts and the Defence proposes that the Appeals Chamber states the error and remedies the consequences of the error by excluding the testimony of Witness RFJ-084 from the case file.

Ground 4(3)(d)

338. The Trial Chamber erred in law and facts by issuing "Decision on Prosecution Motion for Admission of Evidence of RFJ-174 and RFJ-083 Pursuant to Rule 111" of 19 April 2018 (confidential), "Decision on Prosecution Motion for Admission of Evidence of RFJ-017 Pursuant to Rule 111) of 20 April 2018 and by then rejecting Defence's request for certification to appeal by issuing "Decision on Simatović Defence Consolidated Request for Certification to Appeal Decisions on Admission of Evidence of witnesses RFJ-017, RFJ-174 and RFJ-083 Pursuant to Rule 111" dated 8 June 2018 (confidential).

339. [redacted]".[298]

296 [redacted]

297 [redacted]

298 [redacted]

340. [redacted]", [301]

341. The consequence of these Trial Chamber decisions is that the Prosecutor is in fact given the discretion to arbitrarily label witnesses as "unavailable", in one situation to justify why they did not testify before the ICTY, in another situation to justify why they cannot testify before the IRMCT. The Trial Chamber erred by never clearly defining standards for "unavailable" thus allowing the Prosecutor to call to the re-trial or omit witnesses according to the needs of his or her case.

342. The Trial Chamber's error is an error of law and facts and the Defence proposes that the Appeals Chamber states the error and rectifies the consequences of the error by excluding from the case file the testimony of witnesses RFJ-017, RFJ-083 and RFJ-174.

299 [redacted]

300 [redacted]

301 [redacted]

REMEDY

343. In the light of the errors outlined in the grounds and sub-grounds of appeal, the Appeals Chamber is respectfully requested to:

a) Reverse the conviction entered by the Trial Chamber for Counts 1 to 5 of the indictment and enter judgement of acquittal for all Counts;

b) Alternatively, quash the conviction entered by the Trial Chamber for Counts 1 to 5 and order a new trial;

344. Finally, alternatively, in the event that the Appeals Chamber should find Simatović guilty on all or some of the Counts of the Indictment, to establish that the sentence of 12 years of imprisonment is excessive, and to deliver a more lenient sentence.

Respectfully submitted,
Counsel for the Accused:

Mihajlo Bakrač, Lead Counsel

Vladimir Petrović, Co-Counsel

Belgrade, 22 November 2021

Word Count: 27033

UNITED NATIONS
International Residual Mechanism
for Criminal Tribunals

NATIONS UNIES
Mécanisme international appelé à exercer
les fonctions résiduelles des Tribunaux pénaux

IRMCT · MIFRTP

TRANSMISSION SHEET FOR FILING OF DOCUMENTS / *FICHE DE TRANSMISSION POUR LE DEPOT DE DOCUMENTS*

I - FILING INFORMATION / *INFORMATIONS GÉNÉRALES*

To/ *À* :	IRMCT Registry/ *Greffe du MIFRTP*	☐ Arusha/ *Arusha*	☒ The Hague/ *La Haye*	
From/ *De* :	☐ President / *Président*	☐ Chambers / *Chambre*	☐ Prosecution/ *Bureau du Procureur*	☒ Defence / *Défense*
	☐ Registrar / *Greffier*	☐ Other/ *Autre*		
Case Name/ *Affaire* :	**Prosecutor v. Jovica Stanisic and Franko Simatovic**	**Case Number/ *Affaire n°* :**	**MICR-15-96-A**	
Date Created/ *Daté du* :	**21 November 2022**	**Date transmitted/ *Transmis le* :**	**21 November 2022**	**No. of Pages/ *Nombre de pages* :** **82**
Original Language / *Langue de l'original* :	☒ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda ☐ B/C/S	☐ Other/*Autre* (specify/*préciser*) :
Title of Document/ *Titre du document* :	**NOTICE OF FILING PUBLIC REDACTED VERSION OF SIMATOVIC DEFENCE APPEAL BRIEF**			
Classification Level/ *Catégories de classification* :	☒ Unclassified/ *Non classifié*	☐ Ex Parte Defence excluded/ *Défense exclue*		
	☐ Confidential/ *Confidentiel*	☐ Ex Parte Prosecution excluded/ *Bureau du Procureur exclu*		
	☐ Strictly Confidential/ *Strictement confidentiel*	☐ Ex Parte R86(H) applicant excluded/ *Art. 86 H) requérant exclu*		
		☐ Ex Parte Amicus Curiae excluded/ *Amicus curiae exclu*		
		☐ Ex Parte other exclusion/ *autre(s) partie(s) exclue(s)* (specify/*préciser*) :		

Document type/ *Type de document* :

☒ Motion/ *Requête*	☐ Judgement/ *Jugement/Arrêt*	☐ Book of Authorities/ *Recueil de sources*	☐ Warrant/ *Mandat*
☐ Decision/ *Décision*	☐ Submission from parties/ *Écritures déposées par des parties*	☐ Affidavit/ *Déclaration sous serment*	☐ Notice of Appeal/ *Acte d'appel*
☐ Order/ *Ordonnance*	☐ Submission from non-parties/ *Écritures déposées par des tiers*	☐ Indictment/ *Acte d'accusation*	

II - TRANSLATION STATUS ON THE FILING DATE/ *ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT*

☒ Translation not required/ *La traduction n'est pas requise*

☐ Filing Party hereby submits only the original, and requests the Registry to translate/
La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :
(Word version of the document is attached/ *La version Word est jointe)*

☐ English/ *Anglais* ☐ French/ *Français* ☐ Kinyarwanda ☐ B/C/S ☐ Other/*Autre*(specify/*préciser*) :

☐ Filing Party hereby submits both the original and the translated version for filing, as follows/
La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :

Original/ *Original en*	☐ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda ☐ B/C/S	☐ Other/*Autre* (specify/*préciser*) :
Translation/ *Traduction en*	☐ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda ☐ B/C/S	☐ Other/*Autre* (specify/*préciser*) :

☐ Filing Party will be submitting the translated version(s) in due course in the following language(s)/
La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :

☐ English/ *Anglais* ☐ French/ *Français* ☐ Kinyarwanda ☐ B/C/S ☐ Other/*Autre* (specify/*préciser*) :