

**UNITED  
NATIONS**



**International Residual Mechanism  
for Criminal Tribunals**

---

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

**Date:** 6 September 2021

**Original:** English

---

**IN THE APPEALS CHAMBER**

**Before: The Appeals Chamber**

**Registrar: Mr. Abubacarr Tambaou**

THE PROSECUTOR

v.

JOVICA STANISIC  
FRANKO SIMATOVIĆ

*Public*

---

**SIMATOVIĆ DEFENCE NOTICE OF APPEAL**

---

The Office of the Prosecutor:  
Mr. Serge Brammerts

Counsel for Mr. Stanišić:  
Mr. Wayne Jordash QC

Counsel for Mr. Simatović  
**Mr. Mihajlo Bakrač**  
**Mr. Vladimir Petrović**

## INTRODUCTION

1. Pursuant to Article 23 of the Statute of the International Residual Mechanism for Criminal Tribunals and Rule 133 of the Rules of Procedure and Evidence, the Defence for Franko Simatović hereby files its Notice of Appeal, setting out its grounds of appeal against the Judgement of the Trial Chamber in the *Prosecution v. Jovica Stanišić and Franko Simatović* case of 30 June 2021. Written copy of the Judgement was filed on 6 August 2021.
2. In the Judgement rendered on 30 June 2021, Simatović was found guilty pursuant to Article 1 of the Mechanism Statute and Articles 3, 5 and 7(1) of the ICTY Statute, of Counts 1 to 5 of the Indictment for having aided and abetted the charged crimes committed in Bosanski Samac, and was sentenced to 12 years of imprisonment.
3. Whenever this Notice of Appeal refers to an error of law, it is one that invalidates the verdict. Whenever reference is made to an error of fact, it is one that occasions a miscarriage of justice. Furthermore, the Defence states that each error in fact is such that no reasonable trier of fact would have committed the error.
4. Stating the individual errors in the grounds of appeal does not mean that the Defence accepts other factual and legal findings contained in the Judgement which could constitute ground to establish that Simatović is guilty of any criminal act.
5. The Defence notes that it does not accept a series of other factual and/or legal conclusions contained in the Judgement, which, however, it cannot challenge with this Appeal, given the lack of legal interest in light of the fact that the accused Simatović was found guilty solely of aiding and abetting for events in the Municipality of Bosanski Šamac.
6. The Defence wishes to note that it does not accept the Trial Chamber's factual and legal findings regarding the existence of a joint criminal enterprise, allegations from paras. 380 and 597 of the Judgement, which states that common criminal purpose was shared by senior political, military and police leaders in Serbia. However, the Defence is not in position to challenge these findings due to the lack of legal interest.

7. Detailed reasons for which the Defence believes that the Trial Chamber has erred in both law and fact, as pointed out in the grounds and sub-grounds of this Notice of Appeal, will be stated in the Appeal Brief.

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

8. **Sub-ground 1(1):** The Trial Chamber erred in facts and in law regarding the position and power of the accused Franko Simatović in paras. 351-354.
9. **Sub-ground 1(2):** The Trial Chamber erred in facts and in law when it established Simatović's high-level positions with significant powers and authority within the State Security Service and later the State Security Department, as stated in para. 354.
10. **Sub-ground 1(3):** The Trial Chamber erred in facts and in law when it established that Simatović participated in the planning and carrying out of the attack on Lovinac on 5 August 1991, as stated in para. 29.
11. **Sub-ground 1(4):** The Trial Chamber erred in facts and in law when it established that in August and September 1991 at the latest, Simatović formed the Unit among persons trained in Golubić between May and July/early August, as stated in para. 388.
12. **Sub-ground 1(5):** The Trial Chamber erred in facts and in law when it established that Simatović had authority over the Unit and that he also decided on its use and deployment until at least mid-April 1992, as stated in para. 388.
13. **Sub-ground 1(6):** The Trial Chamber erred in facts and in law when it established that Simatović had authority over the use and deployment of JATD from its formation in August 1993 until the period covered by the indictment, as stated in para. 388

14. **Sub-ground 1(7):** The Trial Chamber erred in facts and in law when it established that Simatović did play a role in organizing the training at the Golubić Camp including through facilitating instruction, as stated in para. 397.
15. **Sub-ground 1(8):** The Trial Chamber erred in facts and in law when it established that the Captain Dragan cooperated with the Serbian State Security Service in relation to the organization and conduct of the training at Golubić, as stated in paras. 399 and 400.
16. **Sub-ground 1(9):** The Trial Chamber erred in facts and in law when it established that Simatović had a role in contributing to the training in Golubić between May and July/early August 1991, as stated in paras. 403 and 409.
17. **Sub-ground 1(10):** The Trial Chamber erred in facts and in law when it established that Simatović had command and control of the Unit from at the earliest August or September 1991, as stated in para. 405.
18. **Sub-ground 1(11):** The Trial Chamber erred in facts and in law when it established that a camp was formed on Pajzoš, and when it was established that among others a group of about 20 local men from Bosanski Šamac and a group of volunteers led by Srećko Radovanović (Debeli) were trained in Ležimir and Pajzoš as stated in para. 407.
19. **Sub-ground 1(12):** The Trial Chamber erred in facts and in law when it was established that the evidence shows that the Ležimir and Pajzoš camps operated as Camps under Simatović's authority and control at least until March or April 1992, and that the training was conducted according to Simatović's instructions with his authorization, as well as financial and logistical support, as stated in para. 409.
20. **Sub-ground 1(13):** The Trial Chamber erred in facts and in law when it established that JATD was responsible to the Assistant Chief of the Serbian State Security Service Simatović, and that reports were submitted to Simatović, as stated in para. 432.
21. **Sub-ground 1(14):** The Trial Chamber erred in facts and in law when it established that Radonjić sent JATD reserve forces to Pajzoš, where those forces were training at the Camp, as stated in para. 434.

22. **Sub-ground 1(15):** The Trial Chamber erred in facts and in law when it gave credence to witness RFJ-066 in the part where it is said that Simatović was involved in providing some financial support to SAO Krajina Police, between late 1990 and the first half of 1991, as stated in paras. 494 and 505.
23. **Sub-ground 1(16):** The Trial Chamber erred in facts and in law when it gave credence to witness RFJ-066 in the part where it is said that Simatović was involved in the provision of weapons to the SAO Krajina Police, between late 1990 and the first half of 1991, as stated in paras 501, 504 and 505.

**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***

24. **Sub-ground 2(1):** 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 and 229.
25. **Sub-ground 2(2):** 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 were transferred by JNA helicopters from Ležimir to Batkuša and informed them about their deployment to Bosanski Šamac, as stated in paras. 209 and 417.
26. **Sub-ground 2(3):** 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.
27. **Sub-ground 2(4):** 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.

28. **Sub-ground 2(5):** The Trial Chamber erred in facts and in law when it established that a group of former police from SAO SBWS, including Lugar, Debeli and RFJ-035 were trained by Unit members as stated in para. 416.
29. **Sub-ground 2(6):** 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.
30. **Sub-ground 2(7):** 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 agreed with the arrangements for the training of persons sent to Bosanski Šamac, as stated in para. 418.
31. **Sub-ground 2(8):** 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.
32. **Sub-ground 2(9):** The Trial Chamber erred in facts and in law when it established that Debeli, Lugar and RJF-035 were incorporated into the Unit following their training at the camps by the Unit, and that they became new members of the Unit as stated in paras. 419 and 424.
33. **Sub-ground 2(10):** 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.
34. **Sub-ground 2(11):** 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.
35. **Sub-ground 2(12):** 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.

36. **Sub-ground 2(13):** 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.

37. **Sub-ground 2(14):** The Trial Chamber erred in facts and law in paras. 604 - 608 (“Legal Findings”):

- a. The Trial Chamber erroneously established that Dragan Djordjevic Crni commanded the group and was a Unit member. The Trial Chamber erred when it established that Debeli, Lugar and Crni were Unit members (para. 604);
- b. The Trial Chamber erred when it established that Simatović provided practical assistance by organizing training of Unit members and local Serbs at the Pajzoš Camp (para. 605);
- c. The Trial Chamber erred by establishing that Simatović's actions had a substantial effect on the perpetration of the crimes (para. 605);
- d. The Trial Chamber erred when it established that Simatović knew that his acts assisted in the commission of the crimes of persecution, murder and forcible displacement and was aware of the essential elements of the crimes including the intent of the perpetrators (para. 606);
- e. The Trial Chamber erroneously establishes the reasons by which it concludes that the only reasonable inference for the evidence is that Simatović knew that his acts assisted in the commission of crimes and was aware of essential elements of the crimes including the intent of the perpetrators (para. 607).

38. **Sub-ground 2(15):** 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.

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

39. **Sub-ground 3(1):** The Trial Chamber erred in law and erred in fact in imposing a sentence of 12 years of imprisonment on Simatović (paras. 617-621 and 628-634). Had the Trial Chamber not committed this error, it would have imposed on Simatović a sentence considerably more lenient.
40. **Sub-ground 3(2):** The Trial Chamber erred in facts and in law when it established that the gravity of the offenses, in the Simatović case, the organization of training and deployment, justify the pronounced sentence of 12 years imprisonment (paras. 617-621).
41. **Sub-ground 3(3):** The Trial Chamber erred in facts and in law when it established that the aggravating factor on Simatović's side was the fact that Simatović was a senior intelligence officer who abused his authority in utilizing the resources at his disposal to facilitate the commission of crimes, as stated in para. 628.
42. **Sub-ground 3(4):** The Trial Chamber erred in facts and in law when it found that Simatović's position in the Stated Security Department and his attitude towards the Unit did not contain mitigating factors, as stated in para. 629. The Trial Chamber erred when it established that training and sending persons into armed conflict is punishable under the SFRY Criminal Code, as stated in para. 629.
43. **Sub-ground 3(5):** The Trial Chamber properly established mitigating factors in para. 630 but does not give them the required weight by finding that these factors have limited weight in mitigation.
44. **Sub-ground 3(6):** The Trial Chamber erred in facts and in law by failing to accept in para. 631 that the overall length of the proceedings constituted a significant mitigating factor, stating that the ICTY Appeal Chamber had ordered a full retrial and that for this reason this mitigating



circumstance is not accepted even though it established that the duration of the proceedings is indeed lengthy.

45. **Sub-ground 3(7):** The Trial Chamber erred in facts and in law because it did not accept “limited freedom” as a mitigating circumstance, justifying this by the decision of the ICTY Appeal Chamber, as stated in para. 632.
46. **Sub-ground 3(8):** The Trial Chamber erred in facts and in law because it did not make adequate comparison with other ICTY cases as stated in paras. 633 and 634.
47. **Sub-ground 3(9):** The Trial Chamber erred in facts and in law because it imposed the same sentence on both of the accused thus disregarding the significant difference in the position and role of the accused in this case. The Trial Chamber had to take into account the specific circumstances of each of the accused when sentencing.

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

48. **Sub-ground 4(1):** The Trial Chamber erred in law because when it established that specific direction is not an element of aiding and abetting liability under customary international law as stated in para. 601.
49. **Sub-ground 4(2):** The Trial Chamber erred in law because when it established that the principle of *lex mitior* is not applicable in this case as stated in para. 601, fn.2352.
50. **Sub-ground 4(3):** The Trial Chamber erred in facts and in law when it rendered specific decisions and subsequently denying the Defence requests for certification to appeal those decisions:
- a. Decision on Simatović’s Request for Video Conference Link for Witness Jovan Krstić (OFS-30), 20 August 2020 and Decision on Simatović’s Request for Certification to Appeal Decision in Relation to Witness Jovan Krstić (OFS-30), 15 September 2020;

- b. Decision on Prosecution Motion for Admission of Evidence of Witnesses RFJ-011 and RFJ-055 Pursuant to Rule 112 of 24 September 2018 (confidential) and 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, 12 November 2018;
- c. Decision on Prosecution Motion for Admission of Evidence of Witness RFJ-084 Pursuant to Rule 111 of 6 June 2018 (confidential) and Decision on Simatović's Request for Certification to Appeal Decision on Admission of Evidence of Witness RFJ-084 , 25 September 2018;
- d. Decision on Prosecution Motion for Admission of Evidence of RFJ-174 and RFJ-083 Pursuant to Rule 111, 19 April 2018 (confidential), Decision on Prosecution Motion for Admission of Evidence of RFJ-017 Pursuant to Rule 111, 20 April 2018 (confidential) and Decision on Simatović's Consolidated Request for Certification to Appeal Decision on Prosecution Motions for Admission of Evidence of Witnesses RFJ-017, RFJ-174 and RFJ-083 Pursuant to Rule 111, 8 June 2018 (confidential);

## **REMEDY**

51. 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;
52. 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, 6 September 2021

Word Count: 3026



**I - FILING INFORMATION / INFORMATIONS GÉNÉRALES**

<b>To/ À :</b>	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>La Haye</i>
<b>From/ De :</b>	<input type="checkbox"/> President / <i>Président</i>	<input type="checkbox"/> Chambers / <i>Chambre</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
	<input type="checkbox"/> Registrar / <i>Greffier</i>	<input type="checkbox"/> Other/ <i>Autre</i>	<input checked="" type="checkbox"/> Defence / <i>Défense</i>
<b>Case Name/ Affaire :</b>	<b>Prosecutor v. Jovica Stanisic and Franko Simatovic</b>	<b>Case Number/ Affaire n° :</b>	<b>MICR-15-96-A</b>
<b>Date Created/ Daté du :</b>	<b>6 September 2021</b>	<b>Date transmitted/ Transmis le :</b>	<b>6 September 2021</b>
		<b>No. of Pages/ Nombre de pages :</b>	<b>11</b>
<b>Original Language / Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Other/Autre (specify/préciser) :
		<input type="checkbox"/> Kinyarwanda / <i>B/C/S</i>	
<b>Title of Document/ Titre du document :</b>	<b>SIMATOVIĆ DEFENCE NOTICE OF APPEAL</b>		
<b>Classification Level/ Catégories de classification :</b>	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
<b>Document type/ Type de document :</b>			
<input checked="" type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
<input type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	

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

<input checked="" type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>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)</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre(specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
<b>Original/ Original en</b> <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other/Autre (specify/préciser) :
<b>Translation/ Traduction en</b> <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other/Autre (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :