

**UNITED  
NATIONS**

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International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-15-96-A

Date: 21 September 2021

Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Carmel Agius  
Judge Lee G. Muthoga  
Judge Aminatta Lois Runeni N’gum  
Judge Yusuf Aksar  
Judge Claudia Hofer

**Registrar:** Mr. Abubacarr Tambadou

**Date:** 21 September 2021

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**STANIŠIĆ DEFENCE URGENT REQUEST TO EXPEDITE THE  
PROSECUTION RESPONSE AND FOR AN EXPEDITED DECISION**

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**The Office of the Prosecutor:**  
Mr Serge Brammertz

**Counsel for Jovica Stanišić:**  
Mr Wayne Jordash QC  
Mr Joe Holmes

**Counsel for Franko Simatović:**  
Mr Mihajlo Bakrač  
Mr Vladimir Petrović

## I. INTRODUCTION

1. On 6 September 2021, the Prosecution filed its Notice of Appeal (‘Notice’) against the Trial Chamber’s judgment of 30 June 2021 (written Judgment filed on 6 August 2021 (‘Judgment’)<sup>1</sup> before the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (‘Mechanism’).<sup>2</sup>

2. On 13 September 2021 the Stanišić Defence filed its Motion to Strike and /or Amend the Prosecution Notice of Appeal, asking for the Prosecution to file an urgent clarification of the substance of Ground 1, Sub-grounds A and B, and the Appeals Chamber to strike down Ground 1, Sub-ground C and Ground 2 of the Notice (‘Motion’).<sup>3</sup>

3. In order to minimize the prejudice to Stanišić, the Stanišić Defence (‘Defence’) hereby files its Request to expedite the Prosecution Response to the Defence Motion and for an expedited decision.

## II. APPLICABLE LAW

4. Rule 153(B) of the Rules, in respect of appeal from judgment proceedings, provides that a response to a motion shall be filed within ten days of the filing of the motion, **unless otherwise ordered by the Appeals Chamber**, whilst a reply to the response, if any, shall be filed within four days of the filing of the response.<sup>4</sup>

5. According to “Motions filed during appeals from Judgment” section of the Practice Direction on Requirements and Procedures for Appeals (‘Practice Direction’), and its paragraph 15, “the opposing party shall file a response within 10 days of the filing of the motion...”<sup>5</sup>

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<sup>1</sup> *Prosecutor v. Stanišić & Simatović*, Case No. MICT-15-96-A, Judgment 30 June 2021 (written Judgment filed on 6 August 2021).

<sup>2</sup> *Prosecutor v. Stanišić & Simatović*, Case No. MICT-15-96-A, Prosecution Notice of Appeal, 6 September 2021 (‘Notice’).

<sup>3</sup> *Prosecutor v. Stanišić & Simatović*, Case No. MICT-15-96-A, Stanišić Defence Motion to Strike and /or Amend Prosecution Notice of Appeal (‘Motion’).

<sup>4</sup> Rules of Procedure and Evidence, MICT/1/Rev.7, 4 December 2020 (‘Rules’), Rule 153(B) [emphasis added].

<sup>5</sup> Practice Direction on Requirements and Procedures for Appeals, MICT/10/Rev.1, 20 February 2019, para. 15 (‘Practice Direction’).

6. However, Rule 154 of the Rules provides that a Chamber may, on good cause being shown, enlarge or reduce any time prescribed by or under the Rules. Equally, paragraph 31 of the Practice Direction is clear that **“In particular, the Pre-Appeal Judge or the Appeals Chamber may vary any time-limit...”**<sup>6</sup>

### III. SUBMISSIONS

7. The Motion to Strike and /or Amend Prosecution Notice of Appeal was filed before the Appeal Chamber on an urgent basis. Expedited submissions from the parties would facilitate an expeditious appellate proceeding and the right to a fair trial, preventing, or reducing, the risk of prejudice to the Accused.

8. The Stanišić Defence files this Motion in order to obtain a clearly specified Notice of the Grounds of the Prosecution’s purported appeal and an indication of the substance of the alleged errors that enables the Defence to be able to “focus the mind “<sup>7</sup> and begin preparing for the Appeal.

9. As is self-evident, and has been recognized by the Appeals Chamber, lack of notice inevitably leads to the prejudice.<sup>8</sup> In circumstances where a party’s notice pleads everything (and nothing) in their purported Notice of Appeal, that prejudice deprives the Respondent of any means of preparing for the Appeal (in this case, an unspecified, ambitious challenge to the Trial Chambers’ overall joint criminal enterprise findings) until, and unless, the defect is remedied.

10. In circumstances, where the accused has been subjected to trial proceedings that have lasted for 18 years, any such delay is, not only unfair, but unconscionable.

### IV. REMEDY SOUGHT

11. The Defence requests that the Appeals Chamber orders:

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<sup>6</sup> *Ibid.*, para 31[emphasis added].

<sup>7</sup> *Prosecutor v. Boškoski & Tarčulovski*, Case No. IT-04-82-A, Appeal Judgment, 19 May 2010, para. 246; *Prosecutor v. Popović at al.*, Case No. IT-05-88-A, Appeal Judgment, 30 January 2015, para. 500.

<sup>8</sup> *Prosecutor v. Renzaho*, Case No. ICTR-97-31-A, Appeal Judgment, 1 April 2011, para 125.; *See also Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Appeal Judgment, 7 July 2006, para 30.

- (i) the Office of the Prosecutor to file any response to the Motion no later than 22 September 2021;
- (ii) Stanišić to file any reply no later than 23 September 2021; and
- (iii) The Office of the Prosecutor to file their amended Notice by the 25<sup>th</sup> of September 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'WJ', with a long horizontal stroke extending to the right.

Wayne Jordash QC  
Counsel for Jovica Stanišić  
21 September 2021

Word count: 816



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