



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-15-96-A

Date: 1 October 2021

Original: English

**IN 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

**Decision of:**

1 October 2021

**PROSECUTOR**

**v.**

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**DECISION ON JOVICA STANIŠIĆ'S MOTION TO STRIKE  
AND/OR AMEND PROSECUTION NOTICE OF APPEAL  
AND ON A REQUEST TO EXPEDITE**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Ms. Laurel Baig  
Ms. Barbara Goy

**Counsel for Mr. Jovica Stanišić:**

Mr. Wayne Jordash  
Mr. Joe Holmes

**Counsel for Mr. Franko Simatović:**

Mr. Mihajlo Bakrač  
Mr. Vladimir Petrović

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

**NOTING** the judgement pronounced by the Trial Chamber of the Mechanism in the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T on 30 June 2021 and filed in writing on 6 August 2021;<sup>2</sup>

**NOTING** the notices of appeal filed on 6 September 2021 by Mr. Jovica Stanišić (“Stanišić”), Mr. Franko Simatović, and the Prosecution against the Trial Judgement;<sup>3</sup>

**BEING SEIZED OF** the “Stanišić Defence Motion to Strike and/or Amend Prosecution Notice of Appeal”, filed on 13 September 2021 (“Motion”), in which Stanišić argues that the Prosecution Notice of Appeal is defective and requests that the Prosecution be ordered to refile it and clarify Sub-Grounds 1(A) and 1(B), and that the Appeals Chamber strike Sub-Ground 1(C) as well as Ground 2 in their entirety;<sup>4</sup>

**NOTING** Stanišić’s submissions that the Prosecution Notice of Appeal fails to meet the requirements set out in Rule 133 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) and paragraph 2(C) of the Practice Direction on Requirements and Procedures for Appeals,<sup>5</sup> and causes him prejudice because, *inter alia*, it refers to “large swathes” or ranges of paragraphs in the Trial Judgement without explaining their relevance, neglects to set out facts or evidence being challenged, fails to indicate the “origin or cause of any purported unreasonableness” in the Trial Chamber’s assessment, uses alternative formulations for alleged legal or factual errors, and fails to identify the relevant evidence that was excluded and the relevant decisions or rulings with reference to the date of their filing and/or transcript page;<sup>6</sup>

**BEING FURTHER SEIZED OF** the “Stanišić Defence Urgent Request to Expedite the Prosecution Response and for an Expedited Decision”, filed on 21 September 2021 (“Request for Expedited Filing”), requesting that, to minimize prejudice to Stanišić, the Prosecution be ordered to

<sup>1</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 10 September 2021, p. 1.

<sup>2</sup> *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Judgement, 30 June 2021 (“Trial Judgement”).

<sup>3</sup> Stanišić Defence Notice of Appeal, 6 September 2021; Simatović Defence Notice of Appeal, 6 September 2021; Prosecution Notice of Appeal, 6 September 2021 (“Prosecution Notice of Appeal”).

<sup>4</sup> Motion, paras. 2, 34, 35.

<sup>5</sup> See Practice Direction on Requirements and Procedures for Appeals, MICT/10/Rev.1, 20 February 2019 (“Practice Direction”).

<sup>6</sup> Motion, paras. 2-4, 7-9, 11-13, 15, 17, 19, 21, 23, 25, 27, 28, 30, 32, 33.

file its response to the Motion by 22 September 2021, that Stanišić file his reply by 23 September 2021, and that the Prosecution file its amended notice of appeal by 25 September 2021;<sup>7</sup>

**NOTING** the response to the Motion, filed on 22 September 2021,<sup>8</sup> wherein the Prosecution submits that, *inter alia*, the Prosecution Notice of Appeal: (i) sufficiently identifies and explains errors of law as well as errors of fact;<sup>9</sup> (ii) appropriately references ranges of paragraphs and properly employs alternative formulations for errors of fact and law in light of the nature of the errors alleged;<sup>10</sup> and (iii) clearly states the error by reference to the Trial Chamber's decision that led to the systematic exclusion of relevant evidence and that submissions on this, in light of a previous decision by the Appeals Chamber, may be developed in motions to admit additional evidence on appeal;<sup>11</sup>

**NOTING** the response to the Request for Expedited Filing, filed on 22 September 2021, wherein the Prosecution submits that Stanišić's request for expedited briefing is moot and that the request fails to justify the proposed timeline for an expedited filing of any amended notice of appeal;<sup>12</sup>

**NOTING** that, on 23 September 2021, Stanišić informed the Appeals Chamber that he will not file a reply to the Prosecution Response;<sup>13</sup>

**RECALLING** that, pursuant to Rule 133 of the Rules, in the notice of appeal, the appellant should "identify the order, decision, or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought";

**RECALLING** that, pursuant to paragraph 2(C) of the Practice Direction, a party seeking to appeal from a trial judgement must file, in accordance with the Mechanism's Statute and the Rules, a notice of appeal containing, *inter alia*, the grounds of appeal, clearly specifying in respect of each ground: (i) any alleged error on a question of law invalidating the decision; and/or (ii) any alleged error of fact which has occasioned a miscarriage of justice; (iii) an identification of the finding or ruling challenged in the judgement, with specific reference to the relevant page number and

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<sup>7</sup> Request for Expedited Filing, paras. 3, 11.

<sup>8</sup> Prosecution Response to Stanišić's Motion to Strike and/or Amend Prosecution Notice of Appeal, 22 September 2021 ("Prosecution Response").

<sup>9</sup> Prosecution Response, paras. 3-6.

<sup>10</sup> Prosecution Response, paras. 7-12.

<sup>11</sup> Prosecution Response, paras. 13, 14.

<sup>12</sup> Prosecution Response to Stanišić Defence Urgent Request to Expedite the Prosecution Response and for an Expedited Decision, 22 September 2021, paras. 1-4.

<sup>13</sup> Email of 23 September 2021 from the Registry of the Mechanism to the Senior Legal Officer of the Appeals Chamber.

paragraph number; (iv) an identification of any other order, decision or ruling challenged, with specific reference to the date of its filing, and/or transcript page; and (v) the precise relief sought;

**RECALLING** that “[t]he only formal requirement under the Rules is that the notice of appeal contains a list of the grounds of appeal; it does not need to detail the arguments that the parties intend to use in support of the grounds of appeal, the place for detailed arguments being the appellant’s brief”;<sup>14</sup>

**CONSIDERING** that the Prosecution Notice of Appeal properly lists the grounds of appeal and that each ground of appeal: (i) specifies whether the Trial Chamber erred in law and/or in fact without employing alternative formulations in a manner that leads to imprecision or confusion;<sup>15</sup> (ii) specifies the findings or rulings that are challenged in the Trial Judgement with reference to the specific paragraph numbers in the Trial Judgement and, where necessary, appropriately refers to ranges of paragraphs in view of the errors alleged;<sup>16</sup> (iii) identifies the specific decision challenged with reference to the date of its filing and the substance of the alleged error, the specifics of which may be developed in future submissions;<sup>17</sup> and (iv) indicates the relief sought;<sup>18</sup>

**FINDING**, therefore, that the Prosecution Notice of Appeal complies with the relevant provisions of the Rules and the Practice Direction;

**FINDING** that the relief sought in the Request for Expedited Filing is moot;

**FOR THE FOREGOING REASONS,**

**HEREBY DISMISSES** the Motion and the Request for Expedited Filing in their entirety.

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<sup>14</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015, para. 500. *See In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Motions to Strike and Requests to Exceed World Limit, 6 November 2009, para. 14; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on the Prosecution’s Motion to Order Veselin Šljivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds Contained in His Appeal Brief, 26 August 2008, para. 8. *See also Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Judgement, 19 May 2010, para. 246.

<sup>15</sup> Prosecution Notice of Appeal, paras. 3, 5-14, 16, 18-20.

<sup>16</sup> Prosecution Notice of Appeal, paras. 6-13, 16-19.

<sup>17</sup> Prosecution Notice of Appeal, paras. 14, 20, referring to *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-PT, Decision on Stanišić’s Request for Stay of Proceedings, 2 February 2017. *See also Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-AR.Misc, Decision on a Prosecution Motion for Enforcement of Order for Retrial, 14 December 2018, para. 10 (noting that it will be open to, *inter alia*, the Prosecution to appeal relevant decisions of the Trial Chamber in an appeal from judgement during which it may also seek to admit additional evidence on appeal, including any evidence that it contends was erroneously excluded by the Trial Chamber).

<sup>18</sup> *See* Prosecution Notice of Appeal, paras. 15, 21.

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

Done this 1<sup>st</sup> day of October 2021,  
At The Hague,  
The Netherlands



Judge Carmel Agius  
Presiding Judge

[Seal of the Mechanism]





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