



The International Residual Mechanism for Criminal Tribunals (“Mechanism”) was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”) after the completion of their respective mandates.

# JUDGEMENT SUMMARY

## APPEALS CHAMBER

(Exclusively for the use of the media. Not an official document)

The Hague, 31 May 2023

### Appeal Judgement Summary for Jovica Stanišić and Franko Simatović

Please find below the summary of the Judgement read out today by Judge Graciela Gatti Santana.

1. The Appeals Chamber pronounces the Judgement in the case of *Prosecutor v. Jovica Stanišić and Franko Simatović* pursuant to Rule 144(D) of the Mechanism’s Rules of Procedure and Evidence (“Rules”). This pronouncement marks a milestone in Mechanism’s mandate to continue the material, temporal, and personal jurisdiction of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), which closed in 2017. The Appeals Chamber presently pronounces the last appeal judgement in connection with cases originally within the ICTY’s jurisdiction involving international crimes committed in the territory of the former Yugoslavia since 1991. This summary does not constitute any part of the official and authoritative Judgement.

#### A. Background

2. Proceedings against Stanišić and Simatović commenced before the ICTY in 2003, when both were indicted and first arrested. A trial chamber of the ICTY acquitted Stanišić and Simatović of all counts of their Indictment on 30 May 2013. On 9 December 2015, the ICTY Appeals Chamber granted, in part, the Prosecution’s appeal, quashed Stanišić’s and Simatović’s acquittals, and ordered a retrial on all counts of the Indictment. Following initial appearances and pre-trial proceedings, retrial before the Trial Chamber of the Mechanism commenced in June 2017 and concluded with the pronouncement of the judgement on 30 June 2021. The Trial Chamber filed the written Trial Judgement on 6 August 2021.

3. During the events relevant to this case, Stanišić served as the Deputy Chief and later Chief of the State Security Service of the Serbian Ministry of the Interior (“State Security Service”). Simatović was



one of the State Security Service's senior intelligence officers. The Trial Chamber found that, through organizing the training of and then deploying Serb forces in connection with the takeover of Bosanski Šamac in Bosnia and Herzegovina in April 1992, Stanišić and Simatović aided and abetted the charged crimes committed in this municipality, which included, among other acts, arbitrary detentions, forced labour, beatings and torture, sexual violence and murder against the non-Serb population. The crimes and violence forced non-Serbs to flee the municipality. The Trial Chamber convicted Stanišić and Simatović of Counts 1 to 5 of their Indictment for murder as a violation of the laws or customs of war as well as murder, persecution, deportation, and forcible transfer as crimes against humanity. The Trial Chamber sentenced each to 12 years of imprisonment. Stanišić and Simatović have appealed these convictions and their sentences.

4. As the Prosecution also charged Stanišić and Simatović with joint criminal enterprise ("JCE") liability, the Trial Chamber further determined that, from at least August 1991 and at all times relevant to the crimes charged in the Indictment, a plurality of persons shared a common criminal purpose to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina, through the commission of the crimes of persecution, murder, deportation, and forcible transfer charged in the Indictment. The crimes covered by the Indictment occurred in Croatia on the territory of the former Serbian Autonomous Regions of Krajina ("SAO Krajina"), and of Slavonia, Baranja, and Western Srem ("SAO SBWS"). In Bosnia and Herzegovina, the crimes were committed in the municipalities of Bijeljina, Zvornik, Bosanski Šamac, Doboj, and Sanski Most, and in an area near the village of Trnovo.

5. While the Trial Chamber found that the conduct supporting Stanišić's and Simatović's aiding and abetting convictions for crimes committed in Bosanski Šamac also contributed to the common criminal purpose, it concluded that the Prosecution had not proven beyond reasonable doubt that either shared the intent to further the common criminal purpose. Consequently, the Trial Chamber did not convict either on the basis of JCE liability. It also did not find them criminally responsible on any other basis. The Prosecution appeals Stanišić's and Simatović's acquittals for JCE liability, or alternatively, the Trial Chamber's failure to convict them for aiding and abetting crimes committed in SAO Krajina, SAO SBWS, Doboj, and Sanski Most.



6. Following the conclusion of written appeal submissions, the Appeals Chamber heard the parties' oral submissions on 24 and 25 January 2023.

7. Below is a summary of the most salient aspects of the Judgement, commencing with Stanišić's and Simatović's appeals against their convictions. To provide context, the Trial Chamber's findings that are central to their criminal responsibility are as follows. The Trial Chamber found that, by at least August or September 1991, Stanišić and Simatović formed the "Unit", which served as the State Security Service combat unit that operated under their command and control, and that they determined its use and deployment until at least mid-April 1992. It concluded that, around late 1991, Stanišić and Simatović established the Ležimir training camp in Fruška Gora, Serbia, and then established the Pajzoš training camp across the border in Ilok, Croatia. The Trial Chamber found that the camps operated under their authority until at least March or April 1992.

8. The Trial Chamber further determined that, at the Ležimir and Pajzoš camps, Unit members trained approximately 20 locals from Bosanski Šamac and a group of former police officers from SAO SBWS, and that this latter group was incorporated into the Unit in March 1992. The Trial Chamber concluded that, on or around 10 April 1992, Simatović addressed Unit members and locals from Bosanski Šamac. Stanišić and Simatović were found to have authorized the deployment of this group of about 50 people to Bosanski Šamac, which was then subordinated to the Yugoslav People's Army ("JNA"). Starting on 17 April 1992, this group with other Serb forces participated in the takeover of this municipality and committed crimes charged in the Indictment.

9. The Trial Chamber found that, by training and deploying the group, Stanišić and Simatović provided practical assistance that had a substantial effect on the perpetration of the crimes committed in Bosanski Šamac. It also concluded that both knew that their acts assisted the commission of the crimes and were aware of the essential elements of the crimes, including the intent of the perpetrators. The Trial Chamber convicted them of aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer on this basis.

### **B. Appeal of Jovica Stanišić**

10. Through Grounds 1 and 2 of Stanišić's appeal, he challenges the Trial Chamber's conclusion that the *actus reus* of aiding and abetting liability in relation to the takeover of Bosanski Šamac had been



established. He contends, in Ground 1, that the Trial Chamber erred in law in failing to assess his remoteness from the practical assistance he was found to have provided and the remoteness of that assistance from the crimes committed in Bosanski Šamac, emphasizing that he was not present during the training or deployment. In Ground 2, Stanišić argues that the Trial Chamber erred in fact in finding him responsible for the organization of training at the Ležimir and Pajzoš camps and the subsequent deployment of Unit members and local Serb forces to Bosanski Šamac. He also challenges the Trial Chamber's conclusion that the training and deployment provided practical assistance which had a substantial effect on the crimes committed in Bosanski Šamac. As detailed in the Judgement, the Appeals Chamber finds that Stanišić has failed to demonstrate that the Trial Chamber erred in law or fact in finding that his *actus reus* for aiding and abetting crimes committed in Bosanski Šamac was established. Grounds 1 and 2 of his appeal are dismissed.

11. Grounds 3 and 4 of Stanišić's appeal challenge the Trial Chamber's conclusion that he possessed the requisite intent for aiding and abetting liability. He submits that the Trial Chamber lowered the applicable *mens rea* standard by failing to consider several factors and by confining its analysis to his knowledge of prior crimes and awareness of the general probability of future crimes occurring in Serb military operations. Stanišić further contends that the Trial Chamber erroneously placed undue weight on "pattern evidence" of preceding crimes committed in Croatia and Bosnia and Herzegovina in late 1991 and early 1992, given the absence of compelling similarities with the planning, preparation, or execution of the crimes committed in Bosanski Šamac. He claims that the Trial Chamber failed to give sufficient weight to factors that the training and deployment could have been for legal activities, the absence of his involvement in planning the takeover and crimes, and the absence of criminal intent of the principal perpetrators during the training and deployment. For reasons explained in the Judgement, the Appeals Chamber finds that Stanišić has not shown that the Trial Chamber was legally required to consider factors he lists when making findings on his *mens rea*, or demonstrate that it erred by lowering the *mens rea* standard. He also has not demonstrated that the Trial Chamber erred in finding that the *mens rea* for aiding and abetting the crimes in Bosanski Šamac had been established. Grounds 3 and 4 of his appeal are dismissed.



### **C. Appeal of Franko Simatović**

12. Parts of Ground 1 of Simatović's appeal allege that the Trial Chamber erred in relation to findings principally concerning his positions within the State Security Service and his conduct unrelated to events in Bosanski Šamac. The Appeals Chamber dismisses these challenges, finding in most instances, that Simatović's allegations of error, if substantiated, would not lead to a miscarriage of justice or invalidate his convictions or sentence.

13. Aspects of Grounds 1 and 2 of Simatović's appeal also challenge the Trial Chamber's finding that he aided and abetted the crimes committed in Bosanski Šamac. In material respects, Simatović argues that the Trial Chamber erred in concluding that he formed the Unit and that it operated under his control, erred in relying on evidence from two accomplice witnesses, erred regarding the training conducted at the Pajzoš and Ležimir camps as well as his authority over the camps and the Unit, erred as to his role in the briefing and the deployment of Unit members and local Serb forces to Bosanski Šamac, and erred in failing to sufficiently account for the JNA's involvement in the training and deployment. Simatović also contends that the Trial Chamber erred with regard to findings on the composition and training of the Unit and local Serb forces, and his awareness of the crimes committed in Bosanski Šamac.

14. The Appeals Chamber finds that the Trial Chamber erred in finding that the locals from Bosanski Šamac were trained at the Ležimir camp but that Simatović has not demonstrated that this error has occasioned a miscarriage of justice. As to his remaining contentions, the Appeals Chamber finds that Simatović has failed to demonstrate that the Trial Chamber erred with respect to the conclusions he challenges on appeal. Simatović's submissions regarding his aiding and abetting liability for crimes committed in Bosanski Šamac as set out in Grounds 1 and 2 of his appeal are dismissed.

15. Finally, the Appeals Chamber dismisses Simatović's challenges, developed principally in Ground 4 of his appeal, that the Trial Chamber erred by incorrectly applying the law with respect to aiding and abetting liability or that it erred in a number of evidentiary decisions taken during the trial proceedings.

### **D. Sentencing Appeals**

16. Ground 5 of Stanišić's appeal alleges that the Trial Chamber, without providing adequate reasoning, abused its discretion and imposed a manifestly disproportionate sentence of 12 years of



imprisonment by erroneously assessing the gravity of the offences and failing to individualize the sentence based on his remote and minimal contribution to the crimes. He argues that the Trial Chamber erroneously relied on sentences from ICTY cases that were incompatible to his circumstances and failed to consider other more appropriate sentences. For reasons explained in the Judgement, the Appeals Chamber finds that Stanišić has not demonstrated that the Trial Chamber erred in its assessment or otherwise imposed an unreasonable sentence.

17. Grounds 6 to 8 of Stanišić's appeal challenge the Trial Chamber's assessment of mitigating circumstances. The Appeals Chamber finds that Stanišić, given his failure at trial to make submissions on mitigating circumstances, waived his right to raise new mitigating circumstances on appeal and argue that the Trial Chamber erred in failing to consider them. Having considered Stanišić's challenges to the mitigating circumstances the Trial Chamber did consider, the Appeals Chamber finds that he has not demonstrated error. The Appeals Chamber dismisses Grounds 5 to 8 of Stanišić's appeal.

18. Ground 3 of Simatović's appeal challenges the Trial Chamber's decision to sentence him to 12 years of imprisonment. He contends that the Trial Chamber erred in assessing the gravity of the offences, his abuse of authority as an aggravating circumstance, his mitigating circumstances, as well comparing his case with other ICTY cases. He also argues that the Trial Chamber erroneously imposed the same sentence on him and Stanišić by failing to account for the difference in their respective positions of authority and roles at the time of the events. The Appeals Chamber finds that Simatović has not demonstrated any error in the Trial Chamber's assessment of relevant factors in the determination of his sentence. The Appeals Chamber dismisses Ground 3 of Simatović's appeal.

### **E. The Prosecution's Appeal**

19. In Ground 1A of its appeal, the Prosecution submits that the Trial Chamber erred in law in assessing what constitutes a contribution to the common criminal purpose, failed to adjudicate or provide a reasoned opinion on alleged contributions, or otherwise erred in failing to find that Stanišić and Simatović contributed to the common criminal purpose to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina in ways beyond their contributions to Bosanski Šamac. In Ground 1B of the Prosecution's appeal, it contends that the Trial Chamber committed errors of law and fact in failing to find that they possessed the requisite *mens rea*



for JCE liability. In Grounds 2A and 2B, the Prosecution argues that the Trial Chamber erred in law and/or fact in failing to convict Stanišić and Simatović for aiding and abetting crimes committed in SAO Krajina, SAO SBWS, Doboje, and Sanski Most. Finally, in Grounds 1C and 2C, the Prosecution requests that the Appeals Chamber declare that the Trial Chamber erred in law in limiting the Prosecution's evidence primarily to that presented during the original trial.

20. Several arguments under Ground 1A relate to the Trial Chamber's assessment of Stanišić's and Simatović's alleged contributions to the common criminal purpose in connection with crimes committed in Sanski Most in September 1995. Specifically, the Prosecution alleges that the Trial Chamber failed to adjudicate, or provide a reasoned opinion, as to whether Stanišić and Simatović deployed 300 to 400 men to operations in the area that includes Sanski Most. It also challenges the Trial Chamber's determination that the Prosecution was not pursuing forcible displacement charges in connection with crimes committed in Sanski Most in September 1995. The Prosecution further argues that the Trial Chamber committed legal and factual errors by failing to find that Stanišić and Simatović contributed to the common criminal purpose by financing the Serbian Volunteer Guard in relation to murders of 75 non-Serbs committed in Sanski Most in September 1995.

21. For reasons explained in the Judgement, the Appeals Chamber dismisses arguments related to the deployment of 300 to 400 Serb forces and the Trial Chamber's determination that the Prosecution was not pursuing forcible displacement charges in connection with events in Sanski Most in September 1995. However, the Appeals Chamber finds that the Trial Chamber committed a legal error by restricting its analysis to whether the Prosecution had proven that the State Security Service paid Serbian Volunteer Guard members "who participated in the commission of the 1995 killings in Sanski Most, charged in the Indictment" and by not assessing contributions to the Serbian Volunteer Guard that might have otherwise significantly contributed to the furtherance of the common criminal purpose in connection with those killings.

22. Having reviewed the record, the Appeals Chamber finds that the Prosecution has eliminated all reasonable doubt that, starting from at least December 1994 and throughout 1995, and, in particular, around the time of the charged murders in Sanski Most, the State Security Service paid: (i) individuals who led and/or delivered money to the Serbian Volunteer Guard; (ii) a significant number of Serbian Volunteer Guard members; and (iii) substantial sums to the Serbian Volunteer Guard around that time.



As elaborated in the Judgement, the Appeals Chamber also concludes that the Prosecution has eliminated all reasonable doubt that Stanišić and Simatović were jointly responsible for the payments around the time of the charged murders committed in Sanski Most, and that, through the payments, both significantly contributed to the furtherance of the common criminal purpose and, in particular, the charged murders.

23. The Appeals Chamber recalls that the significance of an accused's contribution to the common criminal purpose is relevant to assessing the accused's *mens rea* in connection with their alleged JCE liability. As the Trial Chamber did not consider Stanišić's and Simatović's contributions to the common criminal purpose in connection with the charged murders in Sanski Most in September 1995, its *mens rea* findings regarding their intent for JCE liability are deficient and must be re-evaluated. The Appeals Chamber has therefore evaluated key pieces of evidence as well as the Trial Chamber's consideration of such evidence when it concluded that it had not been established that Stanišić and Simatović possessed the shared intent to further the common criminal purpose.

24. Having conducted this review, and for reasons explained in the Judgement, the Appeals Chamber concludes that all reasonable doubt has been eliminated that, at least from the time Stanišić and Simatović organized the training of Unit members and local Serb forces at the Pajzoš camp and their subsequent deployment during the takeover of Bosanski Šamac in 1992, and continuing through the period involving the commission of crimes in Sanski Most in September 1995, Stanišić and Simatović shared the intent to further the common criminal purpose to forcibly and permanently remove the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina through the commission of the crimes charged in the Indictment. All reasonable doubt has also been eliminated that both Stanišić and Simatović possessed the intent to commit the underlying charged crimes.

25. Consequently, the Appeals Chamber grants, in part, Ground 1 of the Prosecution's appeal and finds Stanišić and Simatović responsible under Article 1 the Mechanism's Statute and Article 7(1) ICTY Statute for committing based on their participation in a JCE. As a result, Stanišić and Simatović are liable for charged crimes committed by principal perpetrators whose conduct is attributable to Stanišić and Simatović or other members of the JCE. Based on a review of the findings of the Trial Chamber and the relevant record, these include charged crimes committed in Bosnia and Herzegovina in Bijeljina starting at the end of March 1992, in Zvornik in April 1992, in Bosanski Šamac starting in April 1992, in Dobož in





May 1992, in Sanski Most in April and May 1992, in Trnovo in July 1995, and in Sanski Most in September 1995. The Appeals Chamber also finds that Stanišić and Simatović are liable for a murder committed in Daljska Planina, SAO SBWS, Croatia in June 1992.

26. As JCE liability most appropriately reflects the full scope of Stanišić's and Simatović's criminal conduct in connection with the crimes committed in Bosanski Šamac, the Appeals Chamber sets aside their aiding and abetting convictions based on the same conduct. The Appeals Chamber dismisses the remainder of the Prosecution's appeal alleging errors related to Stanišić's and Simatović's contributions to the JCE, their aiding and abetting liability, and the Trial Chamber's decision to limit the presentation of new evidence in the retrial.

27. The Appeals Chamber has considered the impact of Stanišić's and Simatović's increased culpability in assessing the appropriateness of their sentences. In evaluating all the relevant circumstances, the Appeals Chamber observes, for example, that Stanišić and Simatović have not been found to be involved in the planning or execution of any of the crimes for which they have been convicted. Nor has it been established that either directed or had authority over any of the perpetrators as the crimes were committed. Finally, the Appeals Chamber has determined that the sentence of 12 years of imprisonment imposed on each by the Trial Chamber tends towards the higher range of what is a reasonable exercise of sentencing discretion. This circumstance carries significant weight in the Appeals Chamber's sentencing considerations.

### **F. Disposition**

For the foregoing reasons, **THE APPEALS CHAMBER,**

**PURSUANT** to Article 23 of the Statute and Rule 144 of the Rules;

**NOTING** the written submissions of the parties and their oral arguments presented at the hearing of the appeals on 24 and 25 January 2023;

**SITTING** in open session;

**DISMISSES** Stanišić's and Simatović's appeals in their entirety;



**GRANTS**, in part, Ground 1 of the Prosecution's appeal and **FINDS** Stanišić and Simatović **GUILTY** under Article 1 of the Statute and Articles 3, 5, and 7(1) of the ICTY Statute for committing, based on their participation in a joint criminal enterprise (first category), the following crimes charged under Counts 1 to 5 of the Indictment: (i) deportation, inhumane acts (forcible transfer), and persecution as crimes against humanity committed in connection with the takeover of Bijeljina; (ii) murder as a violation of the laws or customs of war as well as murder, deportation, inhumane acts (forcible transfer), and persecution as crimes against humanity committed in relation to the takeover of Zvornik; (iii) murder as a violation of the laws or customs of war as well as murder, deportation, inhumane acts (forcible transfer), and persecution as crimes against humanity in connection with and following the takeover of Bosanski Šamac; (iv) inhumane acts (forcible transfer) and persecution as crimes against humanity committed during the takeover of Doboj; (v) deportation, inhumane acts (forcible transfer), and persecution as crimes against humanity committed in Sanski Most in April and May 1992; (vi) murder as a violation of the laws or customs of war as well as murder and persecution as crimes against humanity committed in Trnovo in July 1995 and Sanski Most in September 1995; and (vii) murder as a violation of the laws or customs of war as well as murder and persecution as crimes against humanity for the killing of Marija Senaši in Daljska Planina, SAO SBWS, in June 1992;

**SETS ASIDE** the Trial Chamber's finding that Stanišić and Simatović are responsible under Article 1 of the Statute and Article 7(1) of the ICTY Statute for aiding and abetting the crimes, charged under Counts 1 to 5 of the Indictment, committed in Bosanski Šamac;

**DISMISSES** the Prosecution's appeal in all other respects;

**SETS ASIDE** Stanišić's sentence of 12 years of imprisonment and **IMPOSES** a sentence of 15 years of imprisonment, subject to credit being given under Rules 125(C) and 131 of the Rules for the 2,634 days spent in detention as of 31 May 2023;

**SETS ASIDE** Simatović's sentence of 12 years of imprisonment and **IMPOSES** a sentence of 15 years of imprisonment, subject to credit being given under Rules 125(C) and 131 of the Rules for the 3,048 days spent in detention as of 31 May 2023;

**RULES** that this Judgement shall be enforced immediately pursuant to Rule 145(A) of the Rules; and



**ORDERS** that, in accordance with Rules 127(C) and 131 of the Rules, Stanišić and Simatović shall remain in the custody of the Mechanism pending the finalization of the arrangements for their transfer to the State where their sentences will be served.

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