



Appeals Chamber orders retrial of Jovica Stanišić and Franko Simatović

On 15 December 2015, the Appeals Chamber delivered its judgement quashing the Trial Chamber's decision to acquit Jovica Stanišić, formerly Deputy Chief and Chief of the State Security Service (SDB) of the Ministry of Interior of the Republic of Serbia, and Franko Simatović, formerly Deputy Chief of the Second Administration of the Serbian SDB. The Appeals Chamber ordered that Stanišić and Simatović be retried on all counts of the indictment.

In the indictment, the Prosecution alleged that between April 1991 and 31 December 1995, and through their participation in a joint criminal enterprise (JCE), Stanišić and Simatović committed crimes in the Serbian Autonomous Area of Krajina and the Serbian Autonomous Area of Slavonia, Baranja, and Western Srem in Croatia as well as in the municipalities of Bijeljina, Bosanski Šamac, Doboj, Sanski Most, Trnovo, and Zvornik in Bosnia and Herzegovina. The alleged common criminal purpose of the JCE was the forcible and permanent removal of the majority of non-Serbs, principally Croats, Bosnian Muslims, and Bosnian Croats from large areas of Croatia and Bosnia and Herzegovina. Stanišić and Simatović were also charged with having planned, ordered and/or otherwise aided and abetted in the planning, preparation and/or execution of the crimes alleged in the indictment.

On 30 May 2013, the Trial Chamber found that many of the crimes alleged in the indictment were indeed perpetrated by various Serb Forces in the above-mentioned locations. However, the Trial Chamber, by majority, found neither Stanišić nor Simatović responsible for committing these crimes through participation in a JCE as it found that it was not established beyond reasonable doubt that they possessed the requisite intent to further the common criminal purpose. The Trial Chamber also found that it was not proven beyond reasonable doubt that Stanišić or Simatović planned or ordered these crimes and, by majority, that they aided and abetted these crimes. Consequently, the Trial Chamber, by majority, acquitted Stanišić and Simatović under all counts of the indictment. Following the Trial Judgement, the Prosecution filed an appeal.

In its Judgement, the Appeals Chamber observed that before arriving at its conclusion on their intent, the Trial Chamber did not first adjudicate whether the elements of the *actus reus* of JCE liability - namely, the existence of a common criminal purpose, a plurality of persons, and Stanišić's and Simatović's contribution to the common criminal purpose of the JCE - were fulfilled. Thus, the Appeals Chamber, by majority, found that the Trial Chamber erroneously failed to make findings on the existence and scope of a common criminal purpose shared by a plurality of persons prior to finding that the intent of Stanišić and Simatović was not established. In so doing, the Appeals Chamber, again by majority, found that the Trial Chamber erred in law by failing to adjudicate and provide a reasoned opinion on essential elements of JCE liability. In this respect, the Appeals Chamber, by majority, granted part of the Prosecution's first ground of appeal and declared the remainder of this ground moot.

The Appeals Chamber recalled the *Šainović et al.* Appeal Judgement and the *Popović et al.* Appeal Judgement, wherein the Appeals Chamber had affirmed that "*specific direction*" is not an element of aiding and abetting liability under customary international law. The Appeals Chamber subsequently found, by majority, that the Trial Chamber erred in law in requiring that the acts of the aider and abettor be specifically directed to assist the commission of a crime. In this respect, the Appeals Chamber, by majority, granted part of the Prosecution's second ground of appeal and declared the remainder of this ground moot.

On the basis of the identified errors, the Appeals Chamber, by majority, found that the case gave rise to appropriate circumstances for retrial pursuant to Rule 117(C) of the Tribunal's Rules of Procedure and Evidence. Thus, the Appeals Chamber ordered a retrial of Stanišić and Simatović under all counts of the indictment. Judge Agius appended a separate and a partially dissenting opinion, and Judge Afande appended a dissenting opinion.

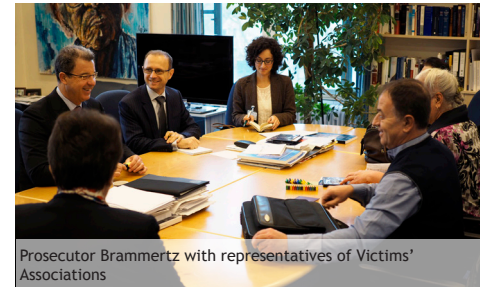
ICTY PRINCIPALS

15 December 2015

Representatives of Victims' Associations meet ICTY President and Prosecutor



On 15 December 2015, representatives of the Association of Victims and Witnesses of Genocide, and of the Movement of Mothers of Srebrenica and Žepa Enclaves, visited the Tribunal to attend the delivery of the Appeal Judgement in the Jovica Stanišić and Franko Simatović case. During the visit, they also held separate meetings with ICTY President Carmel Agius and ICTY Prosecutor Serge Brammertz to discuss issues of common interest.



OFFICE OF THE REGISTRAR

15 & 16 December 2015



Registrar presents ICTY and MICT budget proposals in New York

ICTY and MICT Registrar, John Hocking, presented to the United Nations' Advisory Committee on Administrative and Budgetary Questions and the UN General Assembly's Administrative and Budgetary Committee the 2016-2017 budget proposal for the MICT, as well as the ICTY's final budget.

With four trials and two appeals remaining, the ICTY is set to complete its mandate by the end of 2017.

OFFICE OF THE PRESIDENT

13 December 2015

President Agius conferred The National Order of Merit of Malta



President Carmel Agius has been made an Officer of The National Order of Merit of Malta in a ceremony held at the Palace in Valletta, the capital city of Malta. The honour was bestowed in absentia as President Agius was in Arusha for the delivery of the final appeal judgement of the ICTR.

Malta pays public tribute to Maltese citizens who have distinguished themselves in different walks of life and whose contribution and achievements enrich the general well-being of their fellow countrymen. Foreign nationals who have distinguished themselves by their service in the promotion and fostering of international relations or who have earned the respect and gratitude of the people of the Maltese Islands are also honoured.

OFFICE OF THE PRESIDENT

9 December 2015

President Agius addresses UNSC in New York



President Carmel Agius addressed the UN Security Council (UNSC) and expressed how honoured he was to have been entrusted with the responsibility of guiding the Tribunal's closure. He pledged his commitment to the Council that the Tribunal will complete its mandate by the end of 2017. The President reported that the Tribunal has continued to make progress towards this goal and noted that the judgement in the Stanišić & Simatović case would be delivered in December 2015. Further, he updated the Council on the four trials and two appeals pending before the Tribunal.

In his address, the President acknowledged that the Tribunal faces serious challenges, including staff attrition and staff morale, and stressed that such issues must be managed if the Tribunal is to meet its ultimate goal of closure in 2017. He assured the Council that all possible measures are being implemented to address the causes of potential delays, and paid tribute to the ongoing efforts of Judges and staff in completing judicial work as rapidly as possible.

In conclusion, President Agius reminded the Council that the obstacles faced by the Tribunal should not overshadow its enormous achievements in the fight against impunity and in setting global standards for international criminal law.

OFFICE OF THE PROSECUTOR

9 December 2015



Prosecutor addresses UNSC

On 9 December, Prosecutor Serge Brammertz presented to the UN Security Council the Office of the Prosecutor's (OTP) completion strategy report. The Prosecutor updated the UNSC about the final trials and appeals, the cooperation of Bosnia and Herzegovina, Croatia and Serbia with the OTP, and the situation regarding the national war crimes prosecutions. Noting that there continues to be progress in national war crimes prosecutions, although it is uneven and fragile the Prosecutor stressed that *"it is clear that throughout the former Yugoslavia, more accountability can and should be achieved."*

Prosecutor Brammertz specifically highlighted challenges in the ongoing search for missing persons from all sides of the conflict and called upon all states in the region *"to undertake prominent public awareness campaigns encouraging witnesses, including perpetrators of*

the crimes and their associates, to come forward with information about missing persons." The Prosecutor also informed the Council that his Office has recently completed an extensive review of its experience over the past two decades in prosecuting conflict-related sexual violence crimes.

Prosecutor Brammertz concluded his address by reflecting on the significance of the anticipated delivery of the trial judgement in the case against Radovan Karadžić in the coming months. He remarked, *"While in accordance with the mandate given by this Council, my Office brought many prosecutions against military and civilian leaders from all parties to the conflict, the Karadžić and Mladić trials perhaps best exemplify why this Tribunal was created, as well as the many challenges we have had to overcome. For that reason, their successful completion will be an unmistakable demonstration of the commitment shown by this Council, the United Nations and its Member States to international peace, security and justice."*

OFFICE OF THE PRESIDENT

4 December 2015



President Agius meets with UNSG in New York

On 4 December 2015, UN Secretary-General Ban Ki-moon met with the newly elected ICTY President Carmel Agius at the UN Headquarters in New York. During the meeting President Agius briefed the Secretary-General on the Tribunal's progress towards the completion of its work, including the challenges it faces in the downsizing phase of the organisation.

President Agius confirmed to the Secretary-General that the Tribunal is on track to complete its work by the end of 2017. However, he explained that this did not come without challenges, one of the biggest being staff attrition and its effects on staff morale. Pointing out the importance of staff to an organisation, President Agius praised the ICTY staff and judges and their commitment, expressing his gratitude for their hard work in completing the ongoing cases.

OFFICE OF THE PROSECUTOR

23 November 2015



Prosecutor and Deputy to the Prosecutor take part in a Side Event of the ASP

On 23 November, Prosecutor Serge Brammertz and Deputy to the Prosecutor, Michelle Jarvis, took part in a Side Event of the ICC Assembly of State Parties (ASP) on the new Prosecuting Conflict-Related Sexual Violence Network, which was set up last September in Zurich, during the annual conference of the International Association of Prosecutors (IAP).

The Network is a forum for prosecutors working on accountability for conflict-related sexual violence crimes, designed to facilitate sharing expertise and ideas towards the collective improvement of approaches to prosecuting these crimes. The idea for the Network arose out of legacy work recently completed by the ICTY Office of the Prosecutor.

OFFICE OF THE PROSECUTOR

19-20 November 2015



Serbian War Crimes Prosecutor Vukčević and Prosecutor Brammertz (Photograph: ICTY Archive)

Prosecutor visits Belgrade in preparation for his UNSC report

Prosecutor Serge Brammertz was in Belgrade on 19 and 20 November, as part of preparations for his regular biannual report to the UNSC. The Prosecutor met with Prime Minister of Serbia Aleksandar Vučić, Minister of Interior Nebojša Stefanović, Minister of Justice Nikola Selaković, and War Crimes Prosecutor Vladimir Vukčević, as well as representatives of the international community.

The Prosecutor's mission to Belgrade was the second of two missions to the region undertaken in preparation for his report to the UNSC, following his mission to Sarajevo in October.



STATUS OF CASES

CASES AT TRIAL

Hadžić	<p>Trial proceedings are in the defence phase, but have been adjourned since October 2014 due to the poor health of the Accused.</p> <p>On 16 October 2012, the trial began.</p> <p>On 28 November 2013, the Prosecution concluded its case.</p> <p>On 3 July 2014, the Defence case began.</p> <p>To date, 11 Defence witnesses have been heard.</p> <p>The Accused was granted provisional release in April 2015 and, again, on 21 May 2015.</p> <p>On 29 July and 21 August 2015, the Trial Chamber held hearings to discuss the Accused's health.</p> <p>On 26 October 2015, the Trial Chamber ordered a stay of the proceedings for an initial period of three months. The Prosecution's appeal against that decision is currently pending before the Appeals Chamber.</p>
Karadžić	<p>The evidentiary phase of the trial is closed.</p> <p>On 26 October 2009, the trial began.</p> <p>On 25 May 2012, the Prosecution case officially closed.</p> <p>On 16 October 2012, the Defence case began. It closed on 1 May 2014.</p> <p>Closing arguments took place from 29 September to 7 October 2014.</p> <p>Trial Judgement is expected by the end of March 2016.</p>
Mladić	<p>The evidentiary phase of the trial is ongoing, with the Defence presenting its case.</p> <p>On 16 May 2012, the trial began.</p> <p>On 26 February 2014, the Prosecution closed its case.</p> <p>On 19 May 2014, the Defence commenced its case. So far, 203 Defence witnesses have been heard.</p> <p>Trial Judgement is expected in November 2017.</p>
Šešelj	<p>The evidentiary phase of the trial is closed.</p> <p>On 7 November 2007, the trial began.</p> <p>On 13 January 2010, the Prosecution closed its case.</p> <p>There was no Defence case.</p> <p>The Accused was granted provisional release on 6 November 2014, due to poor health.</p> <p>Trial Judgement is expected in the first quarter of 2016.</p>

CASES ON APPEAL

Prlić <i>et al.</i>	<p>All Accused filed their appeals against the Trial Chamber Judgement rendered on 29 May 2013.</p> <p>A Status Conference took place on 23 November 2015.</p> <p>The Appeal Judgement is expected in November 2017.</p>
Stanišić & Simatović	<p>The Prosecution filed a public redacted version of its Appeal Brief in September 2013, requesting that the Judgement of acquittal for both Accused be overturned. The Appeals Hearing took place on 6 July 2015.</p> <p>The Appeal Judgement was rendered on 15 December 2015. The Appeals Chamber ordered the retrial of Stanišić and Simatović.</p>
Stanišić & Župljanin	<p>The last Status Conference in this case took place on 15 October 2015.</p> <p>The Appeals Hearing took place on 16 December 2015.</p> <p>The Appeal Judgement is expected in June 2016.</p>

FACTS & FIGURES

161 INDIVIDUALS INDICTED

The Tribunal has indicted a total of **161** individuals, and has already completed proceedings with regard to **149** of them. **18** have been acquitted, **80** sentenced (**17** have been transferred to serve their sentence, **2** are awaiting transfer, **55** have served their term, and **6** died while serving their sentence), and **13** have had their cases transferred to local courts.

149	Total number of accused whose proceedings have been completed.
36	Cases terminated (either because indictments were withdrawn or because the accused died, before or after transfer to the Tribunal).
12	Proceedings are on-going with regard to 12 accused: 4 are currently on trial, and 8 are at the appeals stage.
25	Individuals were the subject of contempt proceedings before the ICTY.



KEY FILINGS: NOVEMBER/DECEMBER 2015

HADŽIĆ

1 December 2015	The Prosecution filed an appeal against the Trial Chamber's decision to stay the proceedings in this case for an initial period of 3 months. Presenting four grounds of appeal, the Prosecution requested the Appeals Chamber to reverse the impugned decision, and to order the Trial Chamber to resume the Defence case, even if the Accused cannot attend the trial.
2 December 2015	ICTY President Agius noted the Prosecution's appeal and ordered that the Appeals Chamber shall be composed of Judges Agius, Liu, Pocar, Meron and Afande.
15 December 2015	The Trial Chamber denied the Defence Motion , filed confidentially on 3 November, requesting that conditions of Hadžić's provisional release be modified. The Defence asked that the Accused be allowed contact with a number of former or potential witnesses in his case.

LAZAREVIĆ

3 December 2015	The MICT issued a public redacted version of President Meron's Decision to grant early release to Vladimir Lazarević, effective 3 December 2015.
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Milan LUKIĆ

13 November 2015	The MICT Appeals Chamber denied Milan Lukić's appeal against a separate Appeals Chamber's decision issued on 7 July 2015 and denying Lukić's application for a review of the judgement against him.
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ORIĆ

6 November 2015	Naser Orić filed a Motion before the MICT President Meron, requesting him to designate a Trial Chamber, which would order the BiH Court to discontinue proceedings against him. Orić was arrested in September this year in Switzerland, on the basis of a Serbian arrest warrant.
12 November 2015	MICT President Meron assigned Judge Liu to consider the Motion submitted by Orić's Defence on 6 November 2015.
16 November 2015	The MICT Prosecution filed its response to the Orić's motion and claimed it should be dismissed because the BiH indictment charges him with crimes other than those in the ICTY indictment.
10 December 2015	MICT Judge Liu dismissed the Motion by Naser Orić's Defence to discontinue the current proceedings against him before the BiH Court. Judge Liu noted that the BiH charges are different from the ICTY charges with respect to alleged victims, nature, time and location of his alleged criminal conduct.

PRLIĆ *et al.*

18 November 2015	ICTY President Agius designated himself as pre-appeal Judge in this case. Pursuant to Article 14 (2) of the ICTY Statute, the ICTY President "shall preside" over all appeal cases on which he sits.
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Petar JOJIĆ & Jovo OSTOJIĆ & Vjerica RADETA (Contempt)

1 December 2015	An Order lifting the confidentiality of the contempt charges against three of Vojislav Šešelj's associates was issued. The three individuals are charged with contempt for having threatened, intimidated, offered bribes to, or otherwise interfered with, two witnesses in the main case as well as in the second contempt case against Šešelj.
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Extracts of, and/or quotes from, legal documents are not authoritative; only the order, decision or judgement in its entirety reflects the opinion of the Trial Chamber and/or the Appeals Chamber.