

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“BOSANSKI ŠAMAC” (IT-95-9)
SIMIĆ *et al.*

*The Prosecutor v. Blagoje Simić, Miroslav Tadić, Simo Zarić***BLAGOJE SIMIĆ***Convicted of persecutions based upon unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians*

President of the Municipal Board of the Serbian Democratic Party and the President of the Serb Crisis Staff (later renamed the War Presidency) in the municipality of Bosanski Šamac, located in north-eastern Bosnia and Herzegovina; he was the highest ranking civilian official in the municipality

- Sentenced to 15 years' imprisonment

Crimes convicted of (examples):

Persecutions based upon unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians; cruel and inhumane treatment including beatings, torture, forced labour, and confinement under inhumane conditions; and deportation and forcible transfer (crimes against humanity)

- Simić, as President of the Municipal Assembly and the Crisis Staff, was the highest-ranking civilian in Bosanski Šamac municipality. He knew that his role and authority were essential for the accomplishment of the common goal of persecution.

Born	1960
Indictment	Initial: 21 July 1995; first amended: 25 August 1998, second amended: 11 December 1998; third amended: 15 May 2001; fourth amended: 20 December 2001; fifth amended: 30 May 2002
Surrender	12 March 2001
Transferred to ICTY	12 March 2001
Initial and further appearances	15 March 2001, pleaded not guilty to all counts
Trial Chamber judgement	17 October 2003, sentenced to 17 years' imprisonment
Appeal Chamber judgement	28 November 2006, sentenced to 15 years' imprisonment
Serving sentence	On 27 March 2007, transferred to the United Kingdom to serve sentence; credit was given for time served since 12 March 2001; early release granted on 15 February 2011 (effective on 16 March 2011)

MIROSLAV TADIĆ*Convicted of persecutions based upon deportation and forcible transfer*

Assistant Commander for Logistics within the 4th Detachment (a Yugoslav National Army-organised territorial defence unit), Commander of the Civil Protection Staff, an *ex-officio* member of the Crisis Staff, and a responsible member of the Exchange Commission in the municipality of Bosanski Šamac

- Sentenced to **8 years' imprisonment**

Crimes convicted of (examples):

Persecutions based upon deportation and forcible transfer (crimes against humanity)

- Tadić substantially contributed to the deportation of non-Serb civilians as an aider and abettor, he knew of the non-Serb ethnicity of the prisoners in Bosanski Šamac who were later displaced, and he knew about their arrest, detention, and cruel and inhumane treatment.
- Tadić intended that the non-Serb civilians would be permanently displaced from their homes in the municipality of Bosanski Šamac. He was actively involved in the process of exchanges, and in particular in drawing up lists of people who would be exchanged, and negotiating with the other side..

Born	12 May 1937 in Novi Grad, municipality of Odžak
Indictment	Initial: 21 July 1995; first amended: 25 August 1998; second amended: 11 December 1998; third amended: 15 May 2001; fourth amended: 20 December 2001; fifth amended: 30 May 2002
Surrender	14 February 1998
Transferred to ICTY	15 February 1998
Initial and further appearances	17 February 1998, pleaded not guilty to all counts; 3 September 1998, pleaded not guilty to all counts
Trial Chamber judgement	17 October 2003, sentenced to 8 years' imprisonment
Sentence Served	Early release granted on 3 November 2004, effective 4 November 2004

SIMO ZARIĆ*Convicted of persecutions based upon cruel and inhumane treatment including beatings, torture, and confinement under inhumane conditions*

Assistant Commander for Intelligence, Reconnaissance, Morale and Information in the 4th Detachment; Chief of National Security in Bosanski Šamac from 29 April 1992 to 19 May 1992; and Deputy to the President of the Civilian Council in Odžak

- Sentenced to **6 years' imprisonment**

Crimes convicted of (examples):

Persecutions based upon cruel and inhumane treatment including beatings, torture, and confinement under inhumane conditions (crimes against humanity)

- Zarić conducted interrogations with non-Serb prisoners held in detention facilities in the municipality. While he did not personally beat the prisoners, as a person highly engaged and respected in the social and cultural life in Bosanski Šamac, he gave encouragement and moral support to those who did.

Born	25 July 1948 in Trnjak, municipality of Odžak
Indictment	Initial: 21 July 1995; first amended: 25 August 1998; second amended: 11 December 1998; third amended: 15 May 2001; fourth amended: 20 December 2001; fifth amended: 30 May 2002
Surrender	24 February 1998
Transferred to ICTY	25 February 1998
Initial and further appearances	26 February 1998, pleaded not guilty to all counts; 3 September 1998, pleaded not guilty to all counts
Trial Chamber judgement	17 October 2003, sentenced to 6 years' imprisonment
Sentence Served	Early release granted on 21 January 2004, effective 28 January 2004

STATISTICS

Trial days	234
Witnesses called by Prosecution	43
Witnesses called by Defence	Blagoje Simić: 29 Miroslav Tadić: 28 Simo Zarić: 35
Witnesses called by Trial Chamber	1
Prosecution Exhibits	190
Defence Exhibits	Blagoje Simić: 183 Miroslav Tadić: 196 Simo Zarić: 56

TRIAL	
Commenced	10 September 2001
Closing arguments	30 June 2003 - 4 July 2003
Trial Chamber II	Judge Florence Ndepele Mwachande Mumba (presiding), Judge Sharon Williams, Judge Per-Johan Viktor Lindholm
Counsel for the Prosecution	Peter McCloskey , Gramsci Di Fazio, Philip Weiner, David Re
Counsel for the Defence	For Blagoje Simić: Igor Pantelic/Srđan Vuković For Miroslav Tadić: Novak Lukic/ Dragan Krgović For Simo Zarić: Borislav Pisarević/Aleksandar Lazarević
Judgement	17 October 2003

APPEALS	
Appeals Chamber	Judge Mehmet Güney (presiding), Judge Mohamed Shahabuddeen, Judge Liu Daqun , Judge Andrésia Vaz, Judge Wolfgang Schomburg
Counsel for the Prosecution	Peter Kremer, Barbara Goy, Steffen Wirth
Counsel for the Defence	Igor Pantelić, Peter Murphy
Appeals Chamber judgement	28 November 2006

RELATED CASES	
<i>by geographical area</i>	
KARADŽIĆ (IT-95-5/ 18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA AND HERZEGOVINA"	
PLAVŠIĆ (IT-00-39 AND 40/1) "BOSNIA AND HERZEGOVINA"	
ŠEŠELJ (IT-03-67)	
STANIŠIĆ & SIMATOVIĆ (IT-03-69)	
STANIŠIĆ, MIĆO (IT-04-79)	
TODOROVIĆ (IT-95-9/1) "BOSANSKI ŠAMAC"	

INDICTMENT AND CHARGES

The initial indictment against Stevan Todorović, Blagoje Simić, Miroslav Tadić, Simo Zarić, Milan Simić and Slobodan Miljković was confirmed on 21 July 1995.

On 25 August 1998, leave to amend the indictment against Tadić, Zarić, and Milan Simić, all of whom were in custody, was granted and the three accused had further initial appearances where they pleaded to additional charges in the first amended indictment. Following the death of Miljković on 8 August 1998, the indictment against him was withdrawn. On 27 September 1998, Todorović was transferred to the ICTY. He pleaded not guilty to all charges on 30 September 1998.

On 11 December 1998, a second amended indictment was confirmed against Todorović, Blagoje Simić, Tadić, Zarić and Milan Simić. At a further appearance on 21 January 1999, Todorović pleaded not guilty to all charges contained in the second amended indictment. On 13 December 2000, Todorović entered a guilty plea to count 1 of this indictment and proceedings against him were separated from those of the other accused.

On 12 March 2001, Blagoje Simić surrendered to the Tribunal and pleaded not guilty to the charges against him. A third amended indictment against Blagoje Simić, Tadić, Zarić and Milan Simić was confirmed on 15 May 2001. The trial began on 10 September 2001. A fourth amended indictment was confirmed on 20 December 2001 and filed on 9 January 2002. On 15 May 2002, Milan Simić pleaded guilty to two counts of torture as crimes against humanity contained in the fourth amended indictment. The Trial Chamber severed the case of Milan Simić from the case of Simić *et al.* on 28 May 2002 and ordered the Prosecution to file the fifth amended indictment. This indictment, charging Blagoje Simić, Tadić and Zarić, was filed on 30 May 2002.

Simić was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- **Persecutions on political, racial and religious grounds; deportation;** (crimes against humanity, Article 5),
- **Unlawful deportation or transfer;** (grave breaches of the Geneva conventions, Article 2)

Tadić was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- **Persecutions on political, racial and religious grounds; deportation;** (crimes against humanity, Article 5),
- **Unlawful deportation or transfer;** (grave breaches of the Geneva conventions, Article 2)

Zarić was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- **Persecutions on political, racial and religious grounds; deportation;** (crimes against humanity, Article 5),
- **Unlawful deportation or transfer;** (grave breaches of the Geneva conventions, Article 2)

PRE-TRIAL

Tadić and Zarić were provisionally released from 19 April 2000 until 3 September 2001.

TRIAL

The trial of Milan Simić and his co-accused, Blagoje Simić, Tadić and Zarić, commenced on 10 September 2001. On 15 May 2002, Milan Simić pleaded guilty to two counts of torture as crimes against humanity contained in the fourth amended indictment. The Trial Chamber severed the case of Milan Simić from the case of Simić *et al.* on 28 May 2002 (see *Case Information Sheet of Milan Simić* IT-95-9/2). The

Prosecution concluded their case on 3 September 2002. The Defence case started on 12 November 2002 and concluded on 4 June 2003. The closing arguments took place in the week of 30 June to 4 July 2003.

RULE 98bis DECISION

After the Prosecution concludes the presentation of its evidence, the Defence can ask for the dismissal of the case, if it believes that the presented evidence was insufficient to prove the charges. If the Trial Chamber believes that the Prosecution has not presented sufficient evidence, it can dismiss the case or certain charges and enter a judgement of acquittal before the beginning of the presentation of defence evidence.

On 9 October 2002, in its oral decision, the Trial Chamber rendered a judgement of acquittal of the three accused on:

- the aspect of "destruction" of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock as contained in paragraphs 13(f), 14(c) and 15(f) of the indictment (count 1, persecutions); and
- the whole offence of destruction or wilful damage to institutions dedicated to religion as contained in paragraphs 13(g), 14(f) and 15(g) of the indictment

All remaining counts stood.

TRIAL CHAMBER JUDGEMENT

Simić, a medical doctor, was President of the Municipal Board of the Serbian Democratic Party and the President of the Serb Crisis Staff in the municipality of Bosanski Šamac. He continued as President when the Crisis Staff was renamed the War Presidency. He was the highest ranking civilian official in the municipality.

Tadić, a retired school teacher, was Assistant Commander for Logistics within the 4th Detachment, Commander of the Civil Protection Staff, an ex-officio member of the Crisis Staff, and a responsible member of the Exchange Commission in the municipality of Bosanski Šamac.

Zarić was Assistant Commander for Intelligence, Reconnaissance, Morale and Information in the 4th Detachment, Chief of National Security in Bosanski Šamac from 29 April 1992 to 19 May 1992, and Deputy to the President of the Civilian Council in Odžak.

The Trial Chamber found that the events which took place in the municipalities of Bosanski Šamac and Odžak, located in north-eastern Bosnia-Herzegovina, between 17 April 1992 and 31 December 1993, constituted a widespread and systematic attack on the civilian population. This attack included the forcible takeover of power in Bosanski Šamac by paramilitaries and Serb police, and subsequent acts of persecution and deportation against non-Serb civilians. The Trial Chamber was also satisfied that some members of the 17th Tactical Group of the JNA were present in the town of Bosanski Šamac on 17 April 1992. A state of armed conflict existed in the Republic of Bosnia and Herzegovina during this period and there was a nexus between the armed conflict and the acts of the Simić, Tadić and Zarić.

The Trial Chamber was satisfied upon the evidence that members of the Crisis Staff were participants in a basic form of joint criminal enterprise, sharing the same intent to execute the common plan to persecute non-Serb civilians in the Bosanski Šamac municipality. These members of the Crisis Staff included Simić as President; the Serb police, including the Chief of Police, Stevan Todorović; Serb paramilitaries, including "Debeli" (Srećko Radovanović, "Pukovnik"), "Crni" (Dragan Đorđević), "Lugar" (Slobodan Miljković), and "Laki" (Predrag Lazarević); and the 17th Tactical Group of the JNA.

The Trial Chamber inferred the common plan of the joint criminal enterprise from all the circumstances. The Chamber felt there was sufficient evidence to conclude that participants in the joint criminal enterprise acted in unison to execute a plan that included the forcible takeover of the town of Bosanski Šamac, taking over vital facilities and institutions in the town, and persecuting non-Serb civilians in the municipality of Bosanski Šamac. This common plan was aimed at committing persecution against non-

Serbs, including acts of unlawful arrest and detention; cruel and inhumane treatment, including beatings, torture, forced labour assignments and confinement under inhumane conditions; deportations and forcible transfer.

Simić, as President of the Municipal Assembly and the Crisis Staff, was at the apex of the joint criminal enterprise at the municipal level. He knew that his role and authority were essential for the accomplishment of the common goal of persecution. The Trial Chamber was convinced that Simić and the other participants acted with the shared intent to pursue their common goal of persecution. The Chamber held that Simić had been a participant in the joint criminal enterprise, but that there was no evidence to conclude that Tadić and Zarić had been participants.

With respect to the act of forcible takeover, as charged as an underlying act of persecutions in count 1, the Trial Chamber concluded that it did not reach the level of gravity of the other crimes against humanity and on its own did not amount to persecutions. The Trial Chamber noted, however, that a forcible takeover may serve as the basis for perpetration of other persecutory acts as it provides the conditions necessary for adoption and enforcement of policies infringing upon basic rights of citizens on the basis of their political, ethnic, or religious background.

The Trial Chamber was satisfied that following the takeover in Bosanski Šamac municipality on 17 April 1992, and continuing throughout 1992, large-scale arrests of Bosnian Muslim and Bosnian Croat civilians were carried out by members of the local Serb police and paramilitaries from Serbia. Some members of the 4th Detachment also conducted arrests. Non-Serbs were arrested on racial and political grounds, not because there was a reasonable suspicion that they had committed any offences, pursuant to national or international law. Non-Serb civilians were detained in facilities in Bosanski Šamac municipality, including the police station (SUP), Territorial Defence building, and primary and secondary schools. Groups of detainees were also held in Zasavica and in Crkvina, or transferred to other facilities across Bosnia and Herzegovina, including in Brčko and Bijeljina.

The Trial Chamber found that the only reasonable inference that could be drawn from these facts was that Simić shared the intent of the other participants in the joint criminal enterprise, executing the common plan of persecutions, and participated in the joint criminal enterprise through the unlawful arrest and detention of non-Serb civilians. The police, paramilitaries, Crisis Staff and 17th Tactical Group of the JNA, worked together to maintain the system of arrests and detention. As President of the Crisis Staff, Simić presided over meetings where the operations of municipal authorities were discussed. The Chief of Police, Todorović, reported to the Crisis Staff on the situation of arrests and detention in Bosanski Šamac. Simić was in a position of strong influence and control, and did not take any significant steps in this position to prevent the continued arrests and detentions.

The Trial Chamber was not satisfied that there was sufficient evidence that Miroslav Tadić participated in the unlawful arrest and detention of non-Serbs. While Tadić had knowledge of the discriminatory intent of the joint criminal enterprise through his position as a member of the Exchange Commission, the actions or omissions of Tadić could not be considered to have had a substantial effect on the perpetration of unlawful arrests and detention, and as such did not aid and abet the joint criminal enterprise.

The Trial Chamber was not satisfied that Simo Zarić participated in the unlawful arrest and detention of non-Serbs. Although Zarić conducted interrogations of detainees at the SUP in Bosanski Šamac and in Brčko in his position as Assistant Commander for Intelligence, Reconnaissance, Morale and Information in the 4th Detachment, the Trial Chamber was not satisfied that these acts had a substantial effect on the perpetration of the unlawful arrests and detention. Zarić did not order any arrests, and in several instances advocated the release of detainees.

With respect to the charge against Zarić of interrogating Bosnian Croat, Bosnian Muslim and other non-Serb civilians who had been arrested and detained and forcing them to sign false and coerced statements, the Trial Chamber found that while there was evidence that Zarić conducted interrogations of detainees, there was no evidence that he forced them to sign false and coerced statements. Furthermore, the Trial Chamber held that interrogations as charged alone, did not meet the seriousness required to constitute persecution as a crime against humanity. The Trial Chamber accordingly considered acts of interrogation together with the charge of persecution for acts of cruel and inhumane treatment.

The Trial Chamber considered that the pleading of "cruel and inhumane treatment [...] including beatings, torture, forced labour assignments and confinement under inhumane conditions", was too vague and unspecific to have provided notice to the Defence of the incidents not explicitly set out in the amended indictment, and this materially impaired the ability of Simić, Tadić and Zarić to effectively prepare their defence. Therefore, the Trial Chamber did not consider any cruel and inhumane treatment falling outside the categories of beatings, forced labour assignments, and confinement under inhumane conditions. The Trial Chamber was, however, satisfied that torture was not pleaded as an underlying act of cruel and inhumane treatment, but rather that cruel and inhumane treatment and torture were pleaded on the same level, as underlying acts of persecution.

The Trial Chamber found that detainees were subject to repetitive beatings by paramilitaries and Serb police, causing severe pain and suffering, both mental and physical, which constituted cruel and inhumane treatment. These acts were committed on discriminatory grounds, constituting persecution. Other acts, including sexual assaults, the extraction of teeth, and threats of execution, constituted torture. These acts caused severe physical and mental pain and suffering and occurred in order to discriminate on ethnic grounds against the victims. Non-Serb civilians, who were detained in facilities in Bosanski Šamac, Crkvina and Bijeljina, were confined under inhumane conditions which constituted cruel and inhumane treatment. They did not have sufficient space, food or water, and were subjected to humiliation and degradation. They suffered from unhygienic conditions and did not have appropriate access to medical care. The Trial Chamber found that they were confined under inhumane conditions on discriminatory grounds. The Trial Chamber was not, however, satisfied beyond reasonable doubt that the living conditions of the non-Serbs who were held in Zasavica amounted to confinement under inhumane conditions.

The Trial Chamber was satisfied that Simić participated in the joint criminal enterprise to persecute non-Serb prisoners in the detention facilities in the town of Bosanski Šamac through cruel and inhumane treatment, including beatings, torture, and confinement under inhumane conditions. However, the Chamber was not satisfied that he participated in the joint criminal enterprise to persecute non-Serb detainees through cruel and inhumane treatment in the detention facilities in Crkvina, Brčko and in Bijeljina.

The Trial Chamber was not satisfied that the Prosecution had adduced sufficient evidence to prove that Tadić's conduct had a substantial effect on the perpetration of the crime. The Chamber was not satisfied that Tadić had the authority to restrain any perpetrator from committing persecutory acts against the non-Serb prisoners in the detention centres in Bosanski Šamac, Crkvina, Brčko, or Bijeljina.

The Trial Chamber was satisfied that Zarić aided and abetted the joint criminal enterprise to persecute non-Serb prisoners in the detention facilities in Bosanski Šamac through cruel and inhumane treatment, including beatings, torture and confinement under inhumane conditions. Zarić conducted interrogations with non-Serb prisoners who had been beaten. The Chamber accepted that he did not take part in the beatings and that he did not approve of them. However, the Chamber found that his participation in the interrogations and in the interview of non-Serb prisoners by TV Novi Sad gave encouragement and moral support to the perpetrators of the cruel and inhumane treatment. In this context, the Chamber took into consideration that Zarić was a former chief of the SUP in Bosanski Šamac, Assistant Commander for Intelligence in the 4th Detachment, and a person highly engaged and respected in the social and cultural life in Bosanski Šamac. The Chamber found that these characteristics of Zarić proved beyond reasonable doubt that his participation in interrogations had a supportive effect on the perpetration of the mistreatment. While not satisfied that Zarić shared the discriminatory intent of the perpetrators, the Chamber found that he was aware of such intent. For these reasons, the Chamber was satisfied beyond reasonable doubt that Zarić incurred criminal responsibility as an aider and abettor of persecutions. The Chamber ruled that his criminal responsibility covered cruel and inhumane treatment committed until July 1992 when he was appointed assistant president of the civilian military council in Odžak municipality.

The Trial Chamber was not, however, satisfied that Zarić shared or was aware of the discriminatory intent of the perpetrators of persecution through cruel and inhumane treatment, in Brčko and Bijeljina. The evidence adduced by the Prosecution did not prove beyond reasonable doubt that Zarić had such awareness. Zarić himself only acknowledged that he knew of persecutions against non-Serb civilians in the detention facilities in Bosanski Šamac. Further, the Chamber was not satisfied beyond reasonable doubt that Zarić made a substantial contribution to the persecution of non-Serb prisoners through cruel and inhumane treatment in Crkvina.

The Trial Chamber was satisfied that in violation of the norms of international humanitarian law, civilians were forced to dig trenches, build bunkers and work on other military assignments on the frontline where they were exposed to dangerous conditions and were at high risk of being injured or killed. The Chamber accepted that the acts of forcing civilians to work in life-threatening circumstances failed to meet the obligation for humane treatment of civilians enshrined in the Geneva conventions and amounted to cruel and inhumane treatment. The Chamber was satisfied that these assignments were made on a discriminatory basis and that they reached the level of seriousness required for persecution.

Furthermore, the Trial Chamber was satisfied that non-Serb civilians were subjected to humiliating forced labour. While single incidences of humiliating assignments may not reach the level of gravity required for persecution, the Trial Chamber accepted that these assignments were part of a pattern targeting the Bosnian Muslim and Bosnian Croat political and economic leadership. The Chamber was satisfied that the humiliating assignments reached the level of gravity to amount to persecution. However, the Chamber accepted that certain types of work, including food preparation, maintaining the power and water supply systems, and agricultural work, were necessary for the welfare of the community and even if compulsory were permissible under international humanitarian law. It was not established beyond reasonable doubt that the conditions under which this labour was rendered were such as to amount to cruel and inhumane treatment, or that the assignments were of sufficient gravity to constitute persecution.

The Trial Chamber found that the Secretariat for National Defence, the body responsible for administering the forced labour programme, was accountable to the Crisis Staff. Therefore it found that the Crisis Staff was ultimately responsible for sending people to work in dangerous conditions.

The Trial Chamber was satisfied that the dangerous and humiliating forced labour assignments to which Bosnian Muslims and Bosnian Croats were subjected were part of the joint criminal enterprise to persecute non-Serb civilians in the municipalities of Bosanski Šamac and Odžak. The Chamber was further satisfied that Simić intended to subject Bosnian Muslims and Croats to dangerous or humiliating work. As the President of the Crisis Staff, and later War Presidency, he participated in the appointment and the dismissal of the head of the Municipal Department for Defence. He was aware of the overall situation in the municipality and of the fact that civilians were used for trench digging and other dangerous military assignments. He did not take any measures within his authority to stop this practice.

While the Trial Chamber was satisfied that Tadić was aware of the existence of the forced labour programme, it was not satisfied that he shared or was aware of Simić's intent and that of the other participants in the joint criminal enterprise to subject Bosnian Muslims and Bosnian Croats to dangerous or humiliating work. While the evidence supported the fact that Tadić was involved in the forced labour programme, the Chamber was not satisfied that he participated in forcing non-Serbs to do dangerous or humiliating work.

The Trial Chamber was not satisfied that the evidence presented supported a finding that Zarić substantially contributed to the dangerous or humiliating forced labour assignments.

The Trial Chamber accepted that immediately after the forcible takeover of Bosanski Šamac, individual looting on a large scale occurred. While it had been established that paramilitaries, individual members of the 4th Detachment, policemen, and ordinary Serb civilians, were involved in acts of plundering of non-Serb property, the Chamber was not satisfied that the role of the Crisis Staff in these acts was proven beyond reasonable doubt. The Chamber accepted the evidence of Defence witnesses that some measures were taken by the Crisis Staff to protect property left behind by individual families or property solely owned by public companies.

While the Trial Chamber accepted that some civilians, who gathered every morning in front of the local commune building for their work assignments, were involved in looting, it was not satisfied that there was conclusive evidence beyond a reasonable doubt that the Crisis Staff ordered the looting. Witnesses who were forced to loot testified that sometimes they received instructions from Serb civilians, who were looting along with them, or from the drivers who were looting for their private purposes, that looted goods were loaded onto private vehicles, and that there was no control of any kind.

In view of the above, the Trial Chamber was not satisfied that the widespread plundering and looting of the property of Bosnian Muslims and Croats was part of the common plan to persecute non-Serb civilians. While it was not contested that Simić, Tadić and Zarić knew of the occurrence of acts of looting, the

Chamber was not satisfied that their intentional participation in any form had been proved beyond reasonable doubt.

The Trial Chamber was satisfied that non-Serb civilians were deported from the municipality of Bosanski Šamac to Croatia and from Batkovic to Lipovac. Other non-Serb civilians were also transferred within Bosnia and Herzegovina, namely from the municipality of Bosanski Šamac to Dubica. The Chamber was not satisfied beyond reasonable doubt that transfers of non-Serb civilians from the municipality of Bosanski Šamac to Zasavica and to Crkvina were conducted with the intention to permanently displace them, and for this reason concluded that these non-Serbs were not forcibly transferred. Similarly, the Chamber was not satisfied that the relocation of non-Serb prisoners from one detention centre to another within the Serb-held territory in Bosnia and Herzegovina constituted forcible transfer in the absence of intent on the parts of Simić, Tadić and Zarić that the victims would not return. The Chamber found none of the accused were criminally responsible for forcibly transferring non-Serb prisoners from one detention facility to another, as the Trial Chamber was not satisfied that they had the intent to permanently displace these prisoners.

With regard to the criminal responsibility of Simić, the majority of the judges were satisfied that he took part in the joint criminal enterprise to persecute non-Serb civilians by deporting and forcibly transferring them. The Trial Chamber considered that the Crisis Staff, of which Simić was the President, was regularly informed about the exchanges by Tadić. On 2 October 1992, Simić, as the President of the War Presidency, signed the document appointing the civilian Exchange Committee, which reported on its activities on a monthly basis to the War Presidency. The Chamber also considered that the system of exchanges took place over a period of about one and a half years, and finds that Simić did not take sufficient measures to prevent non-Serbs from being unlawfully displaced. The Chamber was satisfied that Simić was aware of the non-Serb ethnicity of the people who were unlawfully displaced. The Chamber was convinced that the extensive and continuing mistreatment of non-Serb civilians and their subsequent displacement proved that the participants in the joint criminal enterprise to persecute them had the shared intent to permanently displace them. The only reasonable inference from all these persecutory acts was that the perpetrators intended that the victims should not return. Thus, the Chamber was satisfied that Simić had a discriminatory intent with regard to the unlawful displacement of these non-Serb civilians. For these reasons, the Chamber found that Simić participated in the joint criminal enterprise to persecute through deportation and forcible transfer.

With respect to the criminal responsibility of Tadić, the Trial Chamber found that it had not been proven beyond reasonable doubt that Tadić participated in a joint criminal enterprise to persecute non-Serb civilians by unlawfully displacing them; however, it was satisfied beyond reasonable doubt that Tadić substantially contributed to the deportation of non-Serb civilians as an aider and abettor. Tadić was aware that the participants in the joint criminal enterprise to persecute non-Serb civilians through deportation acted with a discriminatory intent. In this context, the Chamber took into account that Tadić knew of the non-Serb ethnicity of the prisoners in Bosanski Šamac who were later displaced, and he knew about their arrest, detention, and cruel and inhumane treatment in the detention facilities in Bosanski Šamac. With regard to Tadić's intent to permanently displace non-Serb civilians, the Chamber did not accept Tadić's statements that he had never wished that some of his fellow citizens would leave forever, and that there had always been the possibility for them to return. The Chamber was satisfied beyond reasonable doubt that the Prosecution had adduced sufficient evidence to prove that Tadić had the intent to permanently displace non-Serb civilians from their homes in the municipality of Bosanski Šamac. The Chamber was satisfied that the only inference from his substantial and continuing activity in the exchange of non-Serb civilians was that Tadić had the intent that these non-Serb civilians would not return, or that he at least knew that his actions were likely to permanently displace these non-Serb civilians and was reckless thereto. For these reasons, the Chamber was satisfied that Tadić incurred criminal responsibility as an aider and abettor to persecutions through deportation.

With respect to the criminal responsibility of Zarić, the Trial Chamber found that he, together with Tadić and Božo Ninković, was designated by the Crisis Staff to be involved in compiling lists with the names of Serbs who were detained in Odžak prior to the exchange in Dubica on 25/26 May 1992, as he hailed from Trnjak Zorice in Odžak municipality and could provide information on many of the detained Serbs. However, the Chamber was not satisfied that the Prosecution had adduced sufficient evidence to establish beyond reasonable doubt that Zarić acted with a discriminatory intent or was aware of the persecutory intent of the participants in the joint criminal enterprise to persecute non-Serb civilians through forcible transfers. The Chamber was also not satisfied that Zarić participated in the unlawful deportation of non-

Serb civilians on 4/5 July 1992 in Lipovac. Although the evidence that Zarić was present at the exchange site was accepted, the Chamber found that the Prosecution had not adduced sufficient evidence to prove beyond reasonable doubt that Zarić's presence or any other activity prior to this exchange constituted a participation in the exchange.

The Trial Chamber was satisfied beyond reasonable doubt that Simić and Tadić were criminally responsible for the deportation of non-Serb civilians, a crime against humanity pursuant to Article 5(d) of the Statute, based on the same conduct that constituted the underlying act of deportation under count 1. With regard to Zarić, the Trial Chamber found that the Prosecution had not adduced sufficient evidence to establish beyond reasonable doubt that he incurred criminal responsibility for deportation pursuant to Article 5 (d) of the Statute.

In accordance with Appeals Chamber jurisprudence on cumulative convictions, the Trial Chamber took into consideration while determining sentences that convictions for different crimes under the Statute based on the same conduct are permissible only if each crime involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by other. Where this test is not met, the Chamber must enter a conviction only for the crime with a materially distinct element, as being the more specific crime.

Both persecution and deportation as crimes against humanity require a demonstration that they were committed within the context of a widespread or systematic attack directed against a civilian population. A charge of persecution, in addition, requires proof that the acts supporting the charge were committed with a discriminatory intent. The crime of deportation as a crime against humanity does not contain an element which is materially distinct from the crime of persecution. The Trial Chamber therefore found that cumulative convictions for deportation as a crime against humanity and persecution through deportation were not permissible and entered a conviction for persecution only, as being the more specific crime.

The Trial Chamber therefore convicted Simić of crimes against humanity for persecutions, based upon unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians, cruel and inhumane treatment including beatings, torture, forced labour assignments and confinement under inhumane conditions, and deportation and forcible transfer. Tadić was convicted of crimes against humanity for persecutions, based upon deportation and forcible transfer. Zarić was convicted of crimes against humanity for persecutions, based upon acts of cruel and inhumane treatment including beatings, torture, forced labour assignments and confinement under inhumane conditions.

On 17 October 2003, the Trial Chamber convicted the accused as follows:

Simić on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- **Persecutions based upon unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians, cruel and inhumane treatment including beatings, torture, forced labour assignments, and confinement under inhumane conditions, and deportation and forcible transfer (crimes against humanity, Article 5).**

Sentence: 17 years' imprisonment.

Tadić on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- **Persecutions based upon deportation and forcible transfer (crimes against humanity, Article 5).**

Sentence: 8 years' imprisonment.

Zarić on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- **Persecutions based upon cruel and inhumane treatment including beatings, torture, and confinement under inhumane conditions (crimes against humanity, Article 5).**

Sentence: 6 years' imprisonment.

Judge Lindholm appended a separate and partly dissenting opinion.

Zarić was granted early release on 21 January 2004, effective 28 January 2004; and Tadić was granted early release on 3 November 2004, effective 4 November 2004.

APPEALS PROCEEDINGS

On 17 November 2003, Simić filed his notice of appeal, and his appellate brief was filed on 17 June 2004. On 16 September 2004, the Appeals Chamber granted Simić's request to file an amended notice of appeal, which was subsequently filed on 22 September 2004.

On 2 June 2006, the appeal hearing was held before the Appeals Chamber.

APPEALS CHAMBER JUDGEMENT

The Appeals Chamber judgement took place on 28 November 2006. The Appeals Chamber reversed the finding of the Trial Chamber that Simić participated in a joint criminal enterprise whose aim was persecution of non-Serbs in the Bosanski Šamac municipality in northern Bosnia.

The Chamber found that Simić was not informed that he was being accused of participating in a joint criminal enterprise until the Prosecution had finished presenting its case, which rendered the trial unfair.

The Chamber also reversed Simić's conviction for persecution due to cruel and inhumane treatment in the form of torture and beating.

However, the Chamber upheld Simić's conviction for aiding and abetting persecution in the form of the unlawful arrests and detention of non-Serb civilians, confinement of non-Serb prisoners in inhumane conditions, forced labour by Bosnian Croats and Bosnian Muslims, and forced displacement of non-Serb civilians.

The Appeals Chamber reduced Simić's sentence to 15 years' imprisonment.

Simić was given credit for the time served since his arrest on 12 March 2001. On 27 March 2007, he was transferred to serve his sentence in the United Kingdom. On 15 February 2011, Simić was granted early release, effective 16 March 2011.