



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No.: IT-03-69-PT
Date: 14 November 2003
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 14 November 2003

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

DECISION ON DEFENCE PRELIMINARY MOTIONS

The Office of the Prosecutor

**Mr. Dermot Groome
Ms. Camille Bibles**

Counsel for the Accused

**Mr. Gerardus Godefridus Johannes Knoops, for Jovica Stanišić
Mr. Zoran Jovanović, for Franko Simatović**

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”),

BEING SEISED OF the “Defence Preliminary Motion On The Form Of The Indictment” filed on 3 September 2003 (“Stanišić Motion”) by the Defence of Jovica Stanišić (“Stanišić”) alleging numerous defects in the form of the indictment against Stanišić including: (i) use of ambiguous words; (ii) lack of specification of the course of conduct of Stanišić in the alleged crimes; (iii) lack of specification of the identities of victims and participants of the alleged crimes; (iv) lack of specification of the time frame when the alleged crimes took place; (v) lack of specification of the location of the alleged crimes; (vi) lack of specification of the causal relationship between Stanišić and the perpetrators of the alleged crimes; (vii) alleged responsibility of Stanišić for other persons indicted before the International Tribunal; and (viii) lack of specification of the names of the alleged members of the joint criminal enterprise,

ALSO BEING SEISED OF a “Defence Preliminary Motion” filed on 3 September 2003 (“Simatović Motion”), by the Defence of Franko Simatović (“Simatović”), alleging numerous defects in the form of the indictment against Simatović including the failure of the indictment to state: (i) whether Simatović is being held *de jure* or *de facto* responsible; (ii) the particular acts or courses of conduct of Simatović that constitute crimes punishable under Article 7, paragraph 1, of the Statute of the International Tribunal (“Statute”); (iii) the facts that indicate the *mens rea* of Simatović; and (iv) the specific time interval to which the charges relate,

NOTING the “Prosecution’s Response to Defence Preliminary Motions On The Form of The Indictment” filed on 15 September 2003 (“Response”) by the Office of the Prosecutor (“Prosecution”), alleging that the indictment is sufficiently pleaded for both accused to prepare their defence and consequently seeking denial of both the Stanišić Motion and the Simatović Motion,

NOTING the “Defence Reply To Prosecution’s Response To The Defence Preliminary Motion On the Form Of The Indictment” filed on 22 September 2003 (“Reply”) by the Defence of Simatović

subsequent to an order granting leave to file a reply,¹ requesting the Prosecution's arguments in the Response to be rejected,

NOTING that the indictment against both Stanišić and Simatović ("Indictment")² concerns events that occurred between 1 August 1991 and 31 December 1995 in Bosnia and Herzegovina and Republic of Croatia ("Croatia")³ and alleges that during the relevant times, Stanišić was the *de facto* head of the State Security Service ("DB") of the Ministry of Internal Affairs of the Republic of Serbia ("MUP") until his formal appointment as the Head or Chief of the DB on 31 December 1991,⁴ and Simatović worked counter-intelligence in the DB and then in the newly formed Intelligence Administration (or Second Administration) of the DB and as such was the commander of the Special Operations Unit of the DB,⁵

NOTING that the Indictment charges both Stanišić and Simatović with individual criminal responsibility under Article 7, paragraph 1, of the Statute, for the crimes of persecutions, murder, deportation and inhumane acts (forcible transfers) described in the Indictment, which they planned, ordered, committed or in whose planning, preparation or execution they otherwise aided and abetted,⁶

NOTING that the Indictment states that neither Stanišić nor Simatović are alleged to have physically committed the crimes charged personally and that the use of the word "committed" includes the participation of both Stanišić and Simatović in a joint criminal enterprise,⁷

NOTING that the objective of the joint criminal enterprise is stated to have been the forcible and permanent removal of the majority of non-Serbs from large areas of Croatia and Bosnia and Herzegovina through the commission of the crimes described in the Indictment and that both Stanišić and Simatović are alleged to have participated in the joint criminal enterprise as co-

¹ "Order Granting Defence Request For Leave to File Reply," *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, 17 Sept. 2003,

² *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-I, 1 May 2003.

³ Indictment, paras 11 and 13.

⁴ *Ibid.*, para. 1.

⁵ *Ibid.*, para. 2.

⁶ *Ibid.*, para. 8.

⁷ *Ibid.*

perpetrators or as aiders or abettors, and that both Stanišić and Simatović had the necessary *mens rea* for the commission of the crimes,⁸

NOTING that the participation of both Stanišić and Simatović in the joint criminal enterprise is described as the participation in the formation, financing, supply and support of secret units established by or with the assistance of the DB for the purpose of undertaking special military actions in Croatia and Bosnia and Herzegovina (“Special Units of the Republic of Serbia DB”)⁹; direction of members and agents of the DB who participated in the perpetration of the crimes in the Indictment; and the provision of arms, funds, training, logistical support and other substantial assistance or support to the Special Units of the Republic of Serbia DB that were involved in the alleged commission of crimes in Croatia and Bosnia and Herzegovina between 1 August 1991 and 31 December 1995,¹⁰

NOTING that the Indictment states that the other individual participants in the joint enterprise included Slobodan Milošević, Veljko Kadijević, Blagoje Adžić, Ratko Mladić, Ramilo Bogdanović, Radovan Stojičić, Mihalj Kertes, Milan Martić, Radovan Karadžić, Biljana Plavšić, Željko Ražnatović and Vojislav Šešelj,¹¹

CONSIDERING that Article 18, paragraph 4, of the Statute and Rule 47 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) require the Prosecutor to prepare an indictment containing the name and particulars of the accused and a concise statement of facts and the crime or crimes with which the accused is charged,

CONSIDERING that an indictment is not defective when, taken as a whole, it makes clear to an accused (1) the nature of the responsibility alleged against him; and (2) the material facts, but not the evidence, by which his particular responsibility will be established,¹²

⁸ Indictment, paras 9-10. Alternatively, the crimes charged in the Indictment are said to have been natural and foreseeable consequences of the execution of the object of the joint criminal enterprise.

⁹ The Special Units of the Republic of Serbia DB include, but are not limited to, Red Berets, Arkan’s Tigers, Martić’s Police, Militia of the Serbian Autonomous District of Slavonia, Baranja and Western Srem, JSO and JATD. See Indictment, para. 3.

¹⁰ Indictment, paras 3 and 13.

¹¹ Ibid., para. 12.

¹² “Decision on the Defence Preliminary Motion on the Form of the Indictment,” *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-PT, 24 Feb. 1999, para. 7.

CONSIDERING that the materiality of the facts pleaded depends on the proximity of an accused to the events for which he is alleged to be criminally responsible¹³ and that neither accused, who held high level positions in the DB, is being held responsible for physically committing the crimes charged,

CONSIDERING that, with respect to allegations of participation in a joint criminal enterprise, the material facts that need to be pleaded are: (i) the purpose and period of the enterprise; (ii) the identity of the participants; and (iii) the nature of the participation of the accused,¹⁴

CONSIDERING that the Prosecution need not provide in the indictment any evidence or a summary of evidence it intends to rely upon to prove its case at trial,¹⁵

CONSIDERING that an indictment, as the primary accusatory instrument, must plead with sufficient detail the essential part of the Prosecution case¹⁶ but that the entire background context need not be pleaded in the indictment,¹⁷

CONSIDERING that the Prosecution is not required to provide exhaustive lists of all the names of towns and villages attacked or details and exact number of victims and that, until sufficient notice is given by the Prosecution, the accused is entitled to proceed upon the basis that what is provided in a list is exhaustive in nature,¹⁸

CONSIDERING that that the phrase “including, but not limited to” in paragraphs 7, 19, 23 and 59 causes an ambiguity in that the Prosecution is holding both accused responsible for crimes allegedly committed in municipalities of Bosnia and Herzegovina not stated in the Indictment,

¹³ “Decision on the Defence Preliminary Motion Against the Amended Indictment,” *Prosecutor v. Milan Martić*, Case No. IT-95-11-PT, 2 June 2003, para. 5, citing “Decision on Application by Defence for Leave to Appeal,” *Prosecutor v. Galić*, Case No. IT-98-29-AR72, 30 Nov. 2002.

¹⁴ “Decision on Prosecution’s Motion for Leave To Amend the Consolidated Indictment,” *Prosecutor v. Momčilo Krajišnik & Biljana Plavšić*, Case No. IT-00-39&40-PT, 4 Mar. 2002, para. 13 (“Krajišnik Decision”).

¹⁵ Krajišnik Decision, para. 9.

¹⁶ Appeal Judgement, *Prosecutor v. Kupreškić et al*, IT-95-16-A, 23 Oct. 2001, para. 114.

¹⁷ “Decision on Preliminary Motion Regarding Defects in the Form of the Indictment,” *Prosecutor v. Naser Orić*, Case No. IT-03-68-PT, 3 July 2003, p. 4.

¹⁸ Decision of Form of Indictment, *Prosecutor v. Hadžihasanović et al*, Case No. IT-01-47-PT, 7 Dec. 2001, para. 43.

CONSIDERING that responsibility of the accused for other persons accused before the International Tribunal are not material facts which need to be pleaded in the Indictment against the accused,

PURSUANT TO Rule 72 of the Rules

HEREBY GRANTS the Motions in part and **ORDERS** the Prosecution as follows:

- (1) to clarify the ambiguity in the use of the words "including, but not limited" contained in paragraphs 7, 19, 23 and 59;
- (2) to file an amended Indictment within 30 days of this Decision; and

DISMISSES the Stanišić Motion and the Simatović Motion in all other respects.

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



Richard May
Presiding

Dated this fourteenth day of November 2003
At The Hague
The Netherlands

[Seal of the Tribunal]