

MADE PUBLIC
PURSUANT TO DC
ORDER, AS CONTAINED
IN THIS DECISION

4-03-69-A
of 2116 - of 2138
of December 2015

2116
Hb.

UNITED
NATIONS



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

Case No. IT-03-69-A
Date: 9 December 2015
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Carmel Agius
Judge Liu Daqun
Judge Arlette Ramaroson
Judge Koffi Kumelio A. Afande

Registrar: Mr. John Hocking

Arrest Warrant of: 9 December 2015

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

CONFIDENTIAL AND *EX PARTE*

**WARRANT OF ARREST AND ORDER FOR SURRENDER OF
FRANKO SIMATOVIĆ**

The Government of the Kingdom of The Netherlands:

Attn: The Ministry of Foreign Affairs

The Government of the Republic of Serbia:

Per: The Embassy of the Republic of Serbia to the Kingdom of The Netherlands

THE APPEALS 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 (“Appeals Chamber” and “Tribunal”, respectively),

NOTING the “Judgement” issued by Trial Chamber I of the Tribunal on 30 May 2013 in the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T (“Trial Judgement”);

NOTING the appeal lodged by the Office of the Prosecutor against the Trial Judgement;¹

NOTING that an appeal hearing was held on 6 July 2015;²

NOTING the “Scheduling Order for Pronouncement of Judgement” issued on 3 November 2015, in which the Appeals Chamber ordered that a hearing shall be held in Courtroom I on Tuesday, 15 December 2015 at 3:00 p.m., at which time the Judgement on this appeal shall be pronounced in public;

CONSIDERING that the Appeals Chamber has rendered the Judgement on this appeal on 9 December 2015, in which it:

- (a) pursuant to Article 25 of the Statute of the Tribunal (“Statute”) and Rules 117 and 118 of the Rules of Procedure and Evidence of the Tribunal (“Rules”):
- (i) **GRANTED**, Judge Afande dissenting, the Prosecution’s sub-ground of appeal 1(A), and **QUASHED**, Judge Afande dissenting, the Trial Chamber’s decision to acquit Jovica Stanišić and Franko Simatović for committing, through their participation in a joint criminal enterprise, murder as a violation of the laws or customs of war and murder, deportation, other inhumane acts (forcible transfer), and persecution as crimes against humanity under all counts of the Indictment;
 - (ii) **GRANTED**, Judge Agius and Judge Afande dissenting, the Prosecution’s sub-ground of appeal 2(A) and **QUASHED**, Judge Agius and Judge Afande dissenting, the Trial Chamber’s decision to acquit Jovica Stanišić and Franko Simatović for aiding and abetting murder as a violation of the laws or customs of war and murder, deportation, other inhumane acts (forcible transfer), and persecution as crimes against humanity under all counts of the Indictment;

¹ Prosecution’s Notice of Appeal, 28 June 2013; Prosecution Appeal Brief, 11 September 2013 (confidential; public redacted version filed on 25 September 2013).

² Appeal Hearing, 6 July 2015, AT. 1-102.

(iii) **ORDERED**, Judge Afande dissenting, pursuant to Rule 117(C) of the Rules that Jovica Stanišić and Franko Simatović be retried on all counts of the Indictment;

(iv) **ORDERED**, Judge Agius and Judge Afande dissenting, the trial chamber composed for retrial, should it consider aiding and abetting liability, to apply the correct law on aiding and abetting liability as affirmed therein, which does not require that the acts of the aider and abettor be specifically directed to assist the commission of a crime; and

(b) pursuant to Rules 64, 107, and 118 of the Rules, **ORDERED**, Judge Afande dissenting, the detention on remand of Jovica Stanišić and Franko Simatović and **ENJOINED**, Judge Afande dissenting, the Commanding Officer of the United Nations Detention Unit in The Hague (“UNDU”) to detain them until further order;³

NOTING that, on 12 November 2015, Franko Simatović informed the Appeals Chamber through email correspondence that he would not attend the pronouncement of the Judgement on 15 December 2015;

PURSUANT TO Articles 18, 20, 21, 25, and 29 of the Statute and Rules 54, 55, 56, 57, 58, 59, 59 *bis*, and 107 of the Rules;

THE APPEALS CHAMBER, JUDGE AFANDE DISSENTING, HEREBY ORDERS AS FOLLOWS:

1. The competent authorities in the Republic of Serbia (“Serbia”) to whom this warrant is transmitted are hereby **DIRECTED AND AUTHORISED** to search for, arrest, detain, and surrender promptly to the Tribunal

FRANKO SIMATOVIĆ

who is charged with crimes committed from no later than April 1991 until 31 December 1995 against non-Serbs in the territory of Croatia and Bosnia and Herzegovina under the following Counts of the Indictment:

Count 1, persecution through murder, deportation, and other inhumane acts (forcible transfer) as a crime against humanity;

Count 2, murder as a crime against humanity;

³ Judgement, 9 December 2015, para. 131.

Count 3, murder as a violation of the laws or customs of war;

Count 4, deportation as a crime against humanity; and

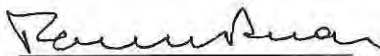
Count 5, other inhumane acts (forcible transfer) as a crime against humanity.

2. The competent authorities of Serbia are hereby **REQUESTED** to advise Franko Simatović, at the time of his arrest and in a language that he understands, of his rights set forth in Article 21 of the Statute and in Rules 42 and 43 of the Rules, which are annexed hereto in English and B/C/S, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence.
3. The relevant authorities of Serbia and the Kingdom of The Netherlands ("The Netherlands") and the Registrar of the Tribunal ("Registrar") are hereby **REQUESTED** to communicate with each other to facilitate the orderly transfer of Franko Simatović to the UNDU, as follows:
 - a. The authorities of Serbia are hereby **REQUESTED**, upon the arrest of Franko Simatović, to promptly notify the Registrar so that he may be transferred to the Tribunal pursuant to Rule 57 of the Rules;
 - b. The authorities of Serbia are hereby **REQUESTED** to ensure the personal security and safety of Franko Simatović until he is delivered into the custody of the Tribunal;
 - c. The Registrar is hereby **DIRECTED** to follow the procedures set forth in Rule 59 *bis* of the Rules; and
 - d. The authorities of The Netherlands are hereby **REQUESTED** to take Franko Simatović into custody upon his arrival in The Netherlands and to escort him to the UNDU.
4. The authorities of all States through whose territory Franko Simatović may travel are hereby **REQUESTED** to:
 - a. hold Franko Simatović in custody for any time that he will spend in transit; and
 - b. arrest and detain Franko Simatović, should he attempt to escape during his transfer to the UNDU.
5. The Registrar is hereby **DIRECTED** to serve this arrest warrant upon Serbia and The Netherlands as soon as possible.

6. The competent authorities of Serbia are hereby **DIRECTED** to execute this arrest warrant immediately and to notify the Registrar as soon as possible once the arrest warrant has been executed.
7. The authorities of Serbia are hereby **DIRECTED** to report to the Appeals Chamber through the Registrar on the status of the execution of this warrant of arrest no later than Friday, 11 December 2015 at 12:00 p.m.
8. The competent authorities of Serbia are hereby **REMINDED** of the confidential and *ex parte* status of this order and everything contained therein.
9. The Registrar is hereby **DIRECTED** to lift the confidential and *ex parte* status of this arrest warrant and to provide copies to counsel for Franko Simatović and the Prosecution as soon as practicable following the pronouncement of the Judgement on Tuesday, 15 December 2015.

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

Dated this ninth day of December 2015,
At The Hague,
The Netherlands.


Judge Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

ANNEX (IN ENGLISH)

STATUTE OF THE TRIBUNAL

Article 21
Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
 - (g) not to be compelled to testify against himself or to confess guilt.

RULES OF PROCEDURE AND EVIDENCE OF THE TRIBUNAL**Rule 42****Rights of Suspects during Investigation**

- (A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect understands:
- (i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;
 - (ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
 - (iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.
- (B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43**Recording Questioning of Suspects**

Whenever the Prosecutor questions a suspect, the questioning shall be audio-recorded or video-recorded, in accordance with the following procedure:

- (i) the suspect shall be informed in a language the suspect understands that the questioning is being audio-recorded or video-recorded;
- (ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;
- (iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
- (iv) a copy of the recorded tape will be supplied to the suspect or, if multiple recording apparatus was used, one of the original recorded tapes;
- (v) after a copy has been made, if necessary, of the recorded tape, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect; and
- (vi) the tape shall be transcribed if the suspect becomes an accused.

ANNEX (IN B/C/S)**STATUT
MEĐUNARODNOG KRIVIČNOG SUDA ZA BIVŠU JUGOSLAVIJU****Član 21
Prava optuženog**

1. Sve osobe su ravnopravne pred Međunarodnim sudom.
2. Prilikom rješavanja po optužbama protiv optuženoga, on ima pravo na pravično i javno suđenje, uz ograde predviđene članom 22 Statuta.
3. Optuženi se smatra nevinim dok mu se ne dokaže krivica u skladu s odredbama ovog Statuta.
4. Prilikom rješavanja po svim optužbama na osnovu ovog Statuta, optuženom se, uz puno poštovanje načela ravnopravnosti, garantuju sljedeća minimalna prava:
 - (a) da bude pravovremeno i detaljno obaviješten, na jeziku koji razumije, o prirodi i razlozima optužbi protiv njega;
 - (b) da ima odgovarajuće vrijeme i uslove za pripremu odbrane i komunikaciju s pravnim zastupnikom po vlastitom izboru;
 - (c) da mu se sudi bez nepotrebnog odgađanja;
 - (d) da mu se sudi u njegovom prisustvu i da se brani lično ili putem pravnog zastupnika po vlastitom izboru; da se, ako nema pravnog zastupnika, obavijesti o tom pravu; te da mu se, kad god to zahtijevaju interesi pravde, dodijeli pravni zastupnik, a da on pritom ne snosi troškove odbrane ako za to nema dovoljno sredstava;
 - (e) da ispita svjedoke koji ga terete ili da se oni ispituju u njegovo ime, kao i da se svjedoci odbrane dovedu i ispituju pod istim uslovima kao i svjedoci koji ga terete;
 - (f) da ima besplatnu pomoć prevodioca ako ne razumije ili ne govori jezik koji se koristi na Međunarodnom sudu;
 - (g) da ne bude primoran da svjedoči protiv sebe ni da prizna krivicu.

**PRAVILNIK O POSTUPKU I DOKAZIMA
MEĐUNARODNOG KRIVIČNOG SUDA ZA BIVŠU JUGOSLAVIJU**

Pravilo 42

Prava osumnjičenog za vrijeme istrage

- (A) Osumnjičeni kojeg tužilac bude ispitivao ima sljedeća prava, o kojima tužilac mora da ga obavijesti prije ispitivanja na jeziku koji osumnjičeni razumije:
- (i) pravo na branioca po vlastitom izboru ili na besplatnu pravnu pomoć koja će mu biti dodijeljena ako nema materijalnih sredstava da je sam plati;
 - (ii) pravo na besplatnu pomoć prevodioca ako ne razumije niti govori jezik na kojem se vrši ispitivanje; i
 - (iii) pravo na šutnju i pravo da bude upozoren da će svaka izjava koju bude dao biti zabilježena i da može biti korištena kao dokaz.
- (B) Ispitivanje osumnjičenog ne vodi se bez prisustva branioca, osim u slučaju da se osumnjičeni dobrovoljno odrekao prava na branioca. Ako se osumnjičeni odrekao tog prava, a kasnije ipak izrazi želju da ima branioca, ispitivanje se odmah prekida i nastavlja se tek kada osumnjičeni angažuje branioca ili kad mu se on dodijeli.

Pravilo 43

Snimanje ispitivanja osumnjičenog

Kad god tužilac ispituje osumnjičenog, to se ispitivanje snima audio ili video tehnikom, u skladu sa sljedećom procedurom:

- (i) osumnjičeni će na jeziku koji razumije biti obaviješten da se ispitivanje snima audio ili video tehnikom;
- (ii) u slučaju prekida u ispitivanju, ta činjenica, kao i vrijeme kad je do prekida došlo, zabilježiće se prije prekida audio ili video snimanja, a zabilježiće se i vrijeme kada je ispitivanje nastavljeno;
- (iii) po završetku ispitivanja, osumnjičenom će se dati prilika da razjasni sve što je rekao i da doda šta god želi i zabilježiće se vrijeme kada je ispitivanje završeno;
- (iv) kopija snimljene trake ili, ako je korišteno više uređaja za snimanje, jedna od originalnih snimljenih traka dostaviće se osumnjičenom;
- (v) nakon što je, ako je to potrebno, napravljena jedna kopija snimljene trake, originalna snimljena traka ili jedna od originalnih traka biće zapečaćena u prisustvu osumnjičenog, uz potpis tužioca i osumnjičenog; i
- (vi) ako osumnjičeni postane optuženi, izradiće se transkript trake.