

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-15-96-A

Date: 21 December 2022

Original: English

IN THE APPEALS CHAMBER

Before: Judge Graciela Gatti Santana, Presiding
Judge Lee G. Muthoga
Judge Aminatta Lois Runeni N’gum
Judge Yusuf Aksar
Judge Claudia Hoefler

Registrar: Mr. Abubacarr M. Tambaou

Decision of: 21 December 2022

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON JOVICA STANIŠIĆ’S MOTION FOR ADMISSION
OF ADDITIONAL EVIDENCE**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Mr. Jovica Stanišić:

Mr. Wayne Jordash
Mr. Joe Holmes

Counsel for Mr. Franko Simatović:

Mr. Mihajlo Bakrač
Mr. Vladimir Petrović

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively)¹ is seized of a motion filed on 8 December 2021 by Mr. Jovica Stanišić (“Stanišić”) requesting the admission of additional evidence on appeal pursuant to Rule 142 of the Rules of Procedure and Evidence of the Mechanism (“Rules”).² The Office of the Prosecutor of the Mechanism (“Prosecution”) filed a confidential response to the Motion on 17 March 2022.³ Stanišić did not file a reply.

I. BACKGROUND

2. In its judgement pronounced on 30 June 2021 and filed in writing on 6 August 2021,⁴ the Trial Chamber of the Mechanism (“Trial Chamber”) convicted Stanišić – the Deputy Chief and later Chief of the Serbian State Security Service (“State Security Service”) – and Mr. Franko Simatović (“Simatović”) – one of the State Security Service’s senior intelligence officers – for having aided and abetted the crimes of persecution, murder, deportation, and forcible transfer committed in Bosanski Šamac in Bosnia and Herzegovina, and sentenced each to a single sentence of 12 years of imprisonment.⁵ The Trial Chamber, however, found that Stanišić and Simatović could not be held responsible for committing, through participation in a joint criminal enterprise, in relation to the crimes committed in Bosanski Šamac or on any other basis, concluding that it was not proven beyond reasonable doubt that either possessed the shared intent to further the common criminal purpose.⁶

3. In determining Stanišić’s sentence, the Trial Chamber, *inter alia*, observed that Stanišić did not make sentencing submissions and noted that it was not obliged to search for information related to mitigating circumstances that counsel did not put before it during closing arguments.⁷ The Trial Chamber nonetheless accorded limited weight in mitigation to a number of circumstances, including Stanišić’s assistance in the release of 300 United Nations Protection Force (“UN” and

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 10 September 2021, p. 1; Order Replacing a Judge in a Case Before the Appeals Chamber, 5 July 2022, p. 1.

² Stanišić Motion for Admission of Additional Evidence, 8 December 2021 (“Motion”), paras. 1, 38, 39.

³ Response to Stanišić’s Motion for Admission of Additional Evidence, 17 March 2022 (confidential) (“Response”).

⁴ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-T, Judgement, 6 August 2021 (“Trial Judgement”). *See also* T. 30 June 2021 pp. 1-16.

⁵ Trial Judgement, paras. 2, 608, p. 270.

⁶ Trial Judgement, paras. 597, 598, 608. The Trial Chamber found proven beyond reasonable doubt that, from at least August 1991 and at all times relevant to the crimes charged in the Indictment, a common criminal purpose existed 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, as well as deportation and inhumane acts (forcible transfers) charged in the Indictment. *See* Trial Judgement, paras. 378, 379, 597. The Trial Chamber found that, through organizing the training of Unit members and local Serb forces at the Pajzoš camp and their subsequent deployment during the takeover of the Bosanski Šamac municipality in April 1992, Stanišić and Simatović contributed to the furtherance of the common criminal purpose of a joint criminal enterprise. *See* Trial Judgement, para. 597. *See also* Trial Judgement, paras. 424, 436, 590.

⁷ Trial Judgement, paras. 613, 627.

“UNPROFOR”, respectively) hostages, captured French pilots, and an American journalist in Bijeljina, as well as his role at the Dayton Peace Conference in November 1995.⁸

4. Stanišić, Simatović, and the Prosecution have appealed the Trial Judgement.⁹ In Ground 8 of his appeal, Stanišić alleges that the Trial Chamber erred in determining his sentence by, *inter alia*, failing to consider and accord appropriate weight in mitigation to the entirety of his acts of cooperation with the international community throughout the period of 1991 to 1995 in support of peace efforts.¹⁰ In sub-ground B of Ground 1 of the Prosecution’s appeal, the Prosecution argues that the Trial Chamber erred in failing to find that Stanišić and Simatović shared the intent to further the joint criminal enterprise’s common criminal purpose.¹¹

5. Stanišić presently seeks to admit as additional evidence on appeal excerpts from the book “The Road to Dayton in Search of Peace: The Diary of the Eleventh Serb – A True Story”, by Chris Spirou (“Spirou”) published in June 2021 (“Book Excerpts” or “Book”, respectively).¹² Stanišić submits that the Book Excerpts provide a first hand account of the Dayton Accords peace process and the “significant role” he played in the course of negotiations and in saving UN, French, and American hostages.¹³ Stanišić contends that the proposed additional evidence could have had a decisive effect on the determination of his sentence and is relevant to the assessment of his *mens rea* in view of the Prosecution’s appeal seeking to establish his joint criminal enterprise liability.¹⁴ The Prosecution opposes the Motion.¹⁵

II. APPLICABLE LAW

6. Rule 142 of the Rules governs the admission of additional evidence on appeal. For additional evidence to be admissible under Rule 142(C) of the Rules, the applicant must demonstrate that the additional evidence was not available at trial in any form or discoverable through the exercise of due diligence.¹⁶ The applicant must also show that the additional evidence is relevant to a material issue

⁸ Trial Judgement, para. 627.

⁹ See Order Scheduling a Status Conference, 7 March 2022, p. 1, n. 3 (detailing the appellate briefing filed by each party).

¹⁰ Motion, paras. 3, 31. See also, e.g., Stanišić Defence Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 13 October 2022), paras. 244-256.

¹¹ See, e.g., Prosecution Appeal Brief, 22 November 2021 (confidential; public redacted version filed on 19 May 2022), paras. 128-152.

¹² Motion, paras. 1, 38, 39, Annex.

¹³ See Motion, paras. 2, 10, 18, 19, 23, 27.

¹⁴ See Motion, paras. 15-37.

¹⁵ See Response, paras. 1, 23.

¹⁶ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Decision on Motions for Admission of Additional Evidence on Appeal, 11 March 2020 (public redacted) (“*Mladić* Decision of 11 March 2020”), para. 6; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion to Admit Additional Evidence on Appeal, 2 March 2018 (“*Karadžić* Decision of 2 March 2018”), para. 7; *Augustin Ngirabatware v. Prosecutor*, Case No. MICT-12-29-A, Decision on Ngirabatware’s Motions for Relief for Rule 73 Violations and Admission of Additional Evidence on Appeal,

at trial and is credible.¹⁷ Once it has been determined that the additional evidence meets these conditions, the Appeals Chamber will determine, in accordance with Rule 142(C) of the Rules, whether it *could* have been a decisive factor in reaching the verdict.¹⁸ Where the Appeals Chamber finds that the evidence was available at trial, it may still be admissible pursuant to Rule 142(C) of the Rules.¹⁹ However, in such a case, the applicant must demonstrate that the exclusion of the additional evidence *would* lead to a miscarriage of justice, in that, if it had been admitted at trial, it *would* have had an impact on the verdict.²⁰

7. In both cases, the applicant bears the burden of identifying with precision the specific finding of fact made by the trial chamber to which the additional evidence pertains, and of specifying with sufficient clarity the impact the additional evidence could or would have had upon the trial chamber's verdict.²¹ An applicant who fails to do so runs the risk that the tendered material will be rejected without detailed consideration.²²

III. DISCUSSION

8. Stanišić submits that the proposed additional evidence is credible and relevant to material issues at trial.²³ He contends that the proposed additional evidence was not available at trial or discoverable through due diligence since the Book was published two weeks before the delivery of the Trial Judgement.²⁴ Stanišić further asserts that it reveals his indispensable contributions to the peace process – through his role before, during, and after the Dayton Accords peace negotiations – and in saving hundreds of hostages, including UN peacekeepers, French pilots, and American journalist David S. Rohde.²⁵ Specifically, Stanišić argues that, if the Trial Chamber had had the opportunity to consider the proposed additional evidence, it would have been duty bound to conclude that his efforts towards peace warranted more than the limited weight in mitigation the Trial Chamber

21 November 2014 (“*Ngirabatware* Decision of 21 November 2014”), para. 24. *See also Prosecutor v. Jean Uwinkindi*, MICT-12-25-AR14.1, Decision on Requests for Admission of Additional Evidence on Appeal, 22 September 2016 (“*Uwinkindi* Decision of 22 September 2016”), para. 5.

¹⁷ *Mladić* Decision of 11 March 2020, para. 6; *Karadžić* Decision of 2 March 2018, para. 7; *Ngirabatware* Decision of 21 November 2014, para. 25. *See also Uwinkindi* Decision of 22 September 2016, para. 5.

¹⁸ *Mladić* Decision of 11 March 2020, para. 6; *Karadžić* Decision of 2 March 2018, para. 7; *Ngirabatware* Decision of 21 November 2014, para. 26. *See also Uwinkindi* Decision of 22 September 2016, para. 5.

¹⁹ *Mladić* Decision of 11 March 2020, para. 6; *Karadžić* Decision of 2 March 2018, para. 7; *Ngirabatware* Decision of 21 November 2014, para. 27. *See also Uwinkindi* Decision of 22 September 2016, para. 6.

²⁰ *Mladić* Decision of 11 March 2020, para. 6; *Karadžić* Decision of 2 March 2018, para. 7; *Ngirabatware* Decision of 21 November 2014, para. 27. *See also Uwinkindi* Decision of 22 September 2016, para. 6.

²¹ *Mladić* Decision of 11 March 2020, para. 7; *Karadžić* Decision of 2 March 2018, para. 8; *Ngirabatware* Decision of 21 November 2014, para. 28. *See also Uwinkindi* Decision of 22 September 2016, para. 7.

²² *Mladić* Decision of 11 March 2020, para. 7; *Karadžić* Decision of 2 March 2018, para. 8; *Ngirabatware* Decision of 21 November 2014, para. 28. *See also Uwinkindi* Decision of 22 September 2016, para. 7.

²³ Motion, paras. 9, 10, 12-14, *referring to, inter alia*, Trial Judgement, paras. 349, 596, 627.

²⁴ Motion, para. 7.

²⁵ Motion, paras. 2, 3, 12, 15, 18-36.

accorded such conduct in sentencing him.²⁶ Stanišić also submits that the proposed additional evidence shows that he did not merely demonstrate the willingness to resolve the conflict, work towards peace, and facilitate the provision of humanitarian assistance “on occasion”, as the Trial Chamber found, but did so consistently and persistently over the course of the conflict.²⁷ Consequently, Stanišić argues that the proposed additional evidence could have been a decisive factor in the Trial Chamber’s determination of his sentence and is highly relevant and probative to countering the Prosecution’s appeal, which seeks to establish that he possessed the requisite *mens rea* for joint criminal enterprise liability.²⁸

9. The Prosecution responds that the Motion does not meet the requirements of Rule 142 of the Rules and should be denied.²⁹ It argues that the proposed additional evidence lacks *prima facie* credibility.³⁰ The Prosecution submits that the Book was available at trial since it was published two weeks prior to the oral pronouncement of the Trial Judgement and, therefore, Stanišić could have sought its admission or, alternatively, a delay in the rendering of the Trial Judgement.³¹ The Prosecution adds that, considering Spirou’s statements in the Book about his personal relationship with Stanišić and their involvement as part of the Serbian delegation – which was mentioned in contemporaneous media coverage and published accounts of the Dayton events – Stanišić would have known of Spirou’s involvement in the Dayton Accords peace process since 1995 and fails to demonstrate that the information he seeks to admit was not available at trial in any form or discoverable through the exercise of due diligence.³² The Prosecution submits that Stanišić fails to show that the proposed additional evidence could or would have affected the Trial Judgement and that its exclusion would lead to a miscarriage of justice.³³ In this regard, the Prosecution contends that the proposed additional evidence is: (i) unreliable given Spirou’s bias towards Stanišić and that it concerns events beyond which Spirou had personal knowledge;³⁴ (ii) cumulative of other evidence already considered by the Trial Chamber;³⁵ and (iii) consistent with the Trial Chamber’s findings.³⁶

²⁶ See Motion, paras. 14, 15, 18, 31.

²⁷ Motion, paras. 16, 23-25, 36, *referring to* Trial Judgement, para. 596.

²⁸ See Motion, paras. 15-37.

²⁹ Response, paras. 1, 23.

³⁰ Response, paras. 6-8.

³¹ Response, paras. 1-3.

³² Response, paras. 2, 4, 5. The Prosecution adds that it had disclosed to Stanišić books containing these accounts. See Response, para. 4, n. 10.

³³ Response, paras. 1, 9-21.

³⁴ Response, paras. 19-21.

³⁵ Response, paras. 14-18.

³⁶ Response, paras. 12, 13.

10. The Appeals Chamber finds that the proposed additional evidence is sufficiently credible for admission as it is reasonably capable of belief. Specifically, there is no dispute that Spirou was involved in the Dayton Accords peace process and the Prosecution does not argue, for example, that he was not in a position to provide the information contained in the Book.³⁷ Furthermore, the Appeals Chamber is satisfied that Stanišić has demonstrated that the Book Excerpts are relevant to material issues at trial.

11. As to availability, the Appeals Chamber recalls that, for additional evidence to be admissible under Rule 142(C) of the Rules, the applicant must demonstrate that the additional evidence was not available at trial in any form or discoverable through the exercise of due diligence.³⁸ Stanišić's emphasis that the Book was only published two weeks before the oral delivery of the Trial Judgement is not determinative of this inquiry.³⁹ Whether proffered evidence was available at trial is not a question of whether the evidence was "available" in a literal sense, but whether any of the *information* sought to be admitted was available in any form during trial or could have been obtained through the exercise of due diligence.⁴⁰ The Appeals Chamber notes Stanišić's submissions that Spirou worked alongside Stanišić in the negotiations leading up to the Dayton Peace Conference as a member of the Serbian delegation in 1995.⁴¹ The Book reveals Spirou's professed personal relationship with Stanišić and the Serbian delegation,⁴² and it includes references to conversations between Stanišić and Spirou at the time.⁴³ In view of these circumstances, Stanišić fails to demonstrate that the publication of the Book was a pre-requisite to obtaining the proposed additional evidence in any form or that he could not have discovered and elicited such evidence at trial notwithstanding an exercise of due diligence. The Appeals Chamber will therefore determine whether excluding the proposed additional evidence would lead to a miscarriage of justice.⁴⁴

³⁷ See, e.g., *Mladić* Decision of 11 March 2020, n. 25; *Karadžić* Decision of 2 March 2018, n. 25; *Ngirabatware* Decision of 21 November 2014, para. 25. Cf. *Uwinkindi* Decision of 22 September 2016, n. 71 (finding proposed additional evidence to contain sufficient indicia of *prima facie* credibility – including the date, the name of the author, and the recipient – for the purposes of admission under Rule 142 of the Rules notwithstanding the opposing party's claims that it was "inherently unreliable" or of "doubtful credibility and reliability").

³⁸ See *supra* para. 6.

³⁹ The Appeals Chamber recalls that evidence received after closing arguments and before the delivery of a trial judgement may be considered available for the purposes of admission on appeal if it becomes available at a stage when it is still reasonably possible for the relevant party to seek to introduce it before the trial chamber. See *Mladić* Decision of 11 March 2020, para. 10 and references cited therein.

⁴⁰ *Mladić* Decision of 11 March 2020, para. 10 and references cited therein.

⁴¹ See Motion, paras. 1, 10, 27, Annex.

⁴² See Response, para. 4, referring to Response, Annex A (Prosecution's unofficial transcript of Chris Spirou's book promotion speech on 15 June 2021), p. 6.

⁴³ See Motion, Annex, pp. 4-9, 11, 12, 17, 20, 22-28.

⁴⁴ See *supra* para 6.

12. The Appeals Chamber has carefully considered the proposed additional evidence as referenced by Stanišić and quoted throughout the Motion.⁴⁵ In material respects, it reflects: (i) Spirou’s impression that Stanišić engaged in “more than a month-long endeavours and efforts that would have impressed Hercules himself, risking both his own life and the lives of his commandos” to have the UNPROFOR hostages released;⁴⁶ (ii) Stanišić informing Spirou that David Rohde was “healthy and free” at the State Security Service building in Belgrade and would be released to the United States Embassy there;⁴⁷ (iii) Spirou’s impression that Stanišić had, for years, tried to convince Radovan Karadžić to accept a peace agreement that would end the civil war in Bosnia and Herzegovina;⁴⁸ (iv) Spirou’s assertion that Stanišić demanded on numerous occasions that Karadžić and Ratko Mladić “stop their inhuman conduct, stop their war games, and killing of innocent people” and accept the peace proposals, and Spirou having heard from Nikola Koljević and Mladić that Stanišić put pressure on Karadžić to accept a peace plan;⁴⁹ (v) Spirou’s impression that Stanišić’s “sole objective was to persuade Karadžić to support various peace proposals and liberate all U.N. peacekeepers that Karadžić was holding hostage” and Spirou’s assertion that Stanišić pressured Mladić to conform with the agreement reached with NATO and remove heavy weaponry from the surroundings of Sarajevo in September 1995;⁵⁰ (vi) Spirou’s belief that Stanišić’s “perseverance and top negotiation skills swayed [...] Karadžić and Bosnian Serb nationalists [...] to accept and sign the unity agreement” to prevent “a mini world war in the Balkans”;⁵¹ and (vii) Spirou’s conversations with and observations of Stanišić reflecting his commitment to and significant role in the implementation of the Dayton Accords peace agreement.⁵²

13. Thus, the proposed additional evidence reflects Spirou’s account, insights, and views – as a member of the Serbian delegation in 1995 – concerning the events surrounding the negotiation and implementation of the agreement following the Dayton Accords peace conference, his conversations with Stanišić, and Stanišić’s role in releasing hostages and in advancing the peace efforts.⁵³ The Appeals Chamber notes that the basis for Spirou’s observations is limited in time and the specific context in which he engaged with Stanišić and others during the peace process. Much of the information Stanišić seeks to have admitted is based on hearsay. Moreover, much of the proposed additional evidence is cumulative of evidence expressly considered in the Trial Judgement and on the

⁴⁵ See, e.g., Motion, paras. 20-35, Annex, pp. 4-9, 11, 12, 17, 20, 22-28.

⁴⁶ Motion, Annex, p. 7. See also Motion, Annex, pp. 5, 6.

⁴⁷ Motion, Annex, p. 9.

⁴⁸ Motion, Annex, p. 11.

⁴⁹ Motion, Annex, pp. 6, 12.

⁵⁰ Motion, Annex, pp. 6, 26. See also Motion, Annex, pp. 5, 6.

⁵¹ Motion, Annex, pp. 4, 5. See also Motion, para. 30, referring to Annex, pp. 20, 22, 26.

⁵² Motion, Annex, pp. 23-28.

⁵³ See Motion, Annex, pp. 4-9, 11, 12, 17, 20, 22-28.

record. The Trial Chamber explicitly referred to Witness Christian Nielsen’s testimony and Exhibit 1D00055 in relation to Stanišić’s role in the promotion of peace and release of hostages.⁵⁴ Other evidence on the record contains similar information.⁵⁵

14. Stanišić does not show that, had the Trial Chamber considered the Book, it would have been bound to find his efforts towards peace warranted “significant” rather than the limited weight in mitigation the Trial Chamber accorded it.⁵⁶ Notably, the Trial Chamber considered, *inter alia*, Stanišić’s assistance in the release of 300 UNPROFOR hostages, captured French pilots, and an American journalist in Bijeljina, as well as his role at the Dayton Peace Conference in November 1995 as a basis for this mitigation.⁵⁷ Moreover, the Appeals Chamber recalls the Trial Chamber’s broad discretion in determining the appropriate sentence,⁵⁸ and that the existence of mitigating factors does not automatically result in a reduction in a sentence.⁵⁹ Consequently, Stanišić fails to demonstrate that the admission of the Book would have impacted the Trial Chamber’s determination of his sentence.

15. With respect to the Trial Chamber’s assessment of Stanišić’s *mens rea* for joint criminal enterprise liability, the Appeals Chamber notes that the Trial Chamber found that it was not established that Stanišić shared the intent to further the common criminal purpose of the joint criminal enterprise.⁶⁰ The proposed additional evidence is, in material respects, cumulative of evidence the Trial Chamber considered in assessing Stanišić’s *mens rea* as it pertained to the joint criminal

⁵⁴ See Trial Judgement, para. 349 (“The Trial Chamber also received evidence in relation to Stanišić’s interactions with the United States intelligence community, particularly the Central Intelligence Agency, and involvement in events during the Indictment period, including his assistance in the release of 300 UNPROFOR hostages, captured French pilots, and an American journalist in Bijeljina, as well as his role at the Dayton Peace Conference in November 1995. [...] Having reviewed the evidence, the Trial Chamber accepts that Stanišić did on occasion demonstrate a willingness to resolve the conflict, work towards peace, and provide humanitarian assistance during the relevant period”), *referring to, inter alia*, Witness Nielsen, T. 16 November 2017 pp. 56-60 (private session) (testifying about Stanišić’s role in the release of hostages and in the negotiations leading up to the Dayton Accords), Exhibit 1D00055 (under seal), pp. 4-6 (concerning evidence stating, *inter alia*, that Stanišić: (i) negotiated with the leadership of *Republika Srpska* resulting in the safe release of over 300 UN servicemen who were held hostage by the Serbian forces following the NATO bombing campaign in May 1995; (ii) made an essential contribution to the liberation of captured French pilots whose airplane had been shot down in Bosnia during that summer; (iii) secured the release of American journalist David Rohde; and (iv) considerably contributed to the negotiation and implementation of the Dayton Accords).

⁵⁵ See T. 15 October 2019 pp. 15, 17-19 (confirming that Stanišić was “the point man” for the release of the hostages and that Milošević told the witness that Stanišić delivered his message that Karadžić would be killed if the hostages were not released); Exhibit 1D00441 (under seal), pp. 37-39, 41, 221, 222 (testifying about Stanišić’s efforts to persuade Karadžić and Mladić to release hostages, his participation in the liberation of American journalist David Rohde and the French pilots captured in *Republika Srpska* in the second half of 1995, and his role in the implementation of the Dayton Accords); Exhibit 1D00548 (under seal), pp. 18, 19, 29, 33, 34, 37 (testifying about Stanišić’s role in the release of hostages).

⁵⁶ See Motion, para. 15.

⁵⁷ Trial Judgement, paras. 613, 627.

⁵⁸ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Judgement, 8 June 2021 (“*Mladić Appeal Judgement*”), para. 539 and references cited therein.

⁵⁹ *Mladić Appeal Judgement*, para. 553 and references cited therein.

⁶⁰ See Trial Judgement, para. 596.

enterprise.⁶¹ It also considered Stanišić’s arguments that he was a key peacemaker, contributed in various ways to resolving the crisis, and that his principal objectives were maintaining security and working for peace.⁶² After reviewing the evidence and Stanišić’s arguments in this respect, the Trial Chamber “[accepted] that Stanišić did on occasion demonstrate a willingness to resolve the conflict, work towards peace, and provide humanitarian assistance during the relevant period”, noting that this evidence equally illustrated his power and influence.⁶³ Ultimately, the Trial Chamber recalled this finding in concluding that it was not established that Stanišić shared the intent to further the common criminal purpose.⁶⁴ Stanišić does not demonstrate that the Book Excerpts would have compelled a different finding, and he has not demonstrated that, in view of the Prosecution’s appeal seeking to establish his *mens rea* for joint criminal enterprise liability, the exclusion of the proposed additional evidence would result in a miscarriage of justice in view of the evidence already on the record.⁶⁵

16. For the foregoing reasons, Stanišić has failed to demonstrate that the proposed additional evidence was not available at trial and that its exclusion would amount to a miscarriage of justice. Stanišić’s request for the admission of the Book therefore does not meet the requirements of Rule 142 of the Rules.

IV. DISPOSITION

17. For the foregoing reasons, the Appeals Chamber **DENIES** the Motion.

18. The Appeals Chamber emphasizes that its findings in this decision pertain strictly to the admissibility of the proposed additional evidence and are in no way indicative of its consideration of the merits of the relevant appeals.

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

Done this 21st day of December 2022,
At The Hague,
The Netherlands



Judge Graciela Gatti Santana
Presiding Judge

[Seal of the Mechanism]

⁶¹ See Trial Judgement, paras. 349, 596, 597.

⁶² See Trial Judgement, para. 349. See also Trial Judgement, para. 575.

⁶³ See Trial Judgement, para. 349.

⁶⁴ See Trial Judgement, para. 596.

⁶⁵ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.1, Decision on Stanišić’s Applications Under Rule 115 to Present Additional Evidence in His Response to the Prosecution’s Appeal, 3 December 2004, para. 16.



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