

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-15-96-A

Date: 30 May 2023

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 Hofer

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 30 May 2023

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON JOVICA STANIŠIĆ’S URGENT MOTION FOR
CONSIDERATION OF RECENT DOMESTIC JURISPRUDENCE**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Mr. Jovica Stanišić:

Mr. Wayne Jordash

Counsel for Mr. Franko Simatović:

Mr. Mihajlo Bakrač
Mr. Vladimir Petrović

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

NOTING the judgement pronounced in this case by the Trial Chamber of the Mechanism (“Trial Chamber”) on 30 June 2021 and filed in writing on 6 August 2021;²

NOTING the appeals against the Trial Judgement filed by Mr. Jovica Stanišić (“Stanišić”), Mr. Franko Simatović, and the Office of the Prosecutor of the Mechanism (“Prosecution”);³

NOTING that the parties presented their oral submissions at the hearing of the appeals on 24 and 25 January 2023;⁴

RECALLING that, on 10 May 2023, the Appeals Chamber ordered, pursuant to Rule 144(D) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), that the judgement in the present case be pronounced publicly in the Hague Branch of the Mechanism on Wednesday, 31 May 2023;⁵

BEING SEIZED OF a motion filed confidentially on 26 May 2023, wherein Stanišić requests that the Appeals Chamber consider a decision of the Supreme Court of the United States of America issued on 18 May 2023 in the case of *Twitter Inc. v. Taamneh et al* (“United States Decision”);⁶

NOTING Stanišić’s submission that the United States Decision is the most recent and authoritative interpretation of common law aiding and abetting liability, and that it is directly relevant to and supports submissions raised in Ground 1 of his appeal against his conviction for aiding and abetting;⁷

NOTING FURTHER Stanišić’s submission that the United States Decision “trigger[s] the Appeals Chamber’s obligation to consider [it] in its assessment” in light of its obligation to consider all relevant jurisprudence including decisions issued after the hearing of an appeal;⁸

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

³ See Scheduling Order for Pronouncement of Judgement, 10 May 2023 (“Order of 10 May 2023”), n. 3 and references cited therein.

⁴ See T. 24 January 2023; T. 25 January 2023. See also Scheduling Order for the Hearing of the Appeals, 5 December 2022, p. 1.

⁵ Order of 10 May 2023, p. 1.

⁶ Urgent Stanišić Defence Motion for Consideration of the Case of *Twitter Inc. v. Taamneh et al.*, 26 May 2023 (confidential) (“Motion”), para. 1, Annex.

⁷ Motion, paras. 2, 4, 8, 10, 12-14.

⁸ Motion, paras. 2, 13, 14.

NOTING that – given the urgency of the matter, the imminence of the judgement on the appeals, and in order to not prejudice Stanišić – the substance of the Prosecution response, filed on 30 May 2023, was not considered and the present decision is being issued without awaiting Stanišić’s reply;⁹

RECALLING that the Appeals Chamber may consider post-hearing submissions if they relate to a variation of the grounds of appeal or if it has made a specific request to the parties for further information;¹⁰

CONSIDERING that the Motion presents the United States Decision in order to buttress arguments raised in Stanišić’s appeal and, therefore, does not relate to any variation of a ground of his appeal and the Appeals Chamber has not directed the parties to make additional submissions;

CONSIDERING FURTHER that the Appeals Chamber is not bound by the findings of other courts, including domestic courts,¹¹ and that Stanišić has not demonstrated that the United States Decision is relevant jurisprudence that must be considered by the Appeals Chamber for a fair determination of his appeal;

FINDING that Stanišić has not demonstrated a valid basis for the Appeals Chamber to consider the United States Decision in connection with his appeal;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion.

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

Done this 30th day of May 2023,
At The Hague,
The Netherlands



Judge Graciela Gatti Santana
Presiding Judge

[Seal of the Mechanism]

⁹ See *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Decision on an Urgent Motion for Provisional Release on Humanitarian Grounds to Attend Memorial Service, 5 July 2018 (confidential), n. 5. See also Prosecution Response to Urgent Stanišić Defence Motion for Consideration of the Case of *Twitter Inc. v. Taamneh et al.*, 30 May 2023 (confidential).

¹⁰ *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Decision on Prosper Mugiraneza’s Motion for Leave to File Post-Hearing Submissions, 15 January 2013, p. 2; *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-A, Decision on Muvunyi’s Request for Consideration of Post-Hearing Submissions, 18 June 2008, para. 6. See also Rule 133 of the Rules.

¹¹ *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgement, 20 March 2018, para. 434 and references cited therein.



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