



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: 15 November 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge Fausto Pocar
Judge Liu Daqun
Judge Khalida Rachid Khan

Registrar: Mr. John Hocking

Decision of: 15 November 2013

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION'S REQUEST FOR LEAVE TO
FILE SUPPLEMENTARY AUTHORITY**

The Office of the Prosecutor:

Mr. Peter Kremer QC
Mr. Mathias Marcussen

Counsel for the Defence:

Mr. Wayne Jordash and Mr. Scott Martin for Jovica Stanišić
Mr. Mihajlo Bakrač and Mr. Vladimir Petrović for Franko Simatović

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” rendered by Trial Chamber I on 30 May 2013,¹ acquitting Jovica Stanišić (“Stanišić”) and Franko Simatović (“Simatović”) on all counts;²

NOTING the “Prosecution’s Notice of Appeal”, filed by the Office of the Prosecutor (“Prosecution”) on 28 June 2013, and the “Prosecution Appeal Brief”, filed confidentially by the Prosecution on 11 September 2013, in which the Prosecution argues, *inter alia*, that specific direction is not an element of the *actus reus* of aiding and abetting;³

NOTING that, on 26 September 2013, the Appeals Chamber of the Special Court for Sierra Leone (“SCSL”) rendered the *Taylor* Appeal Judgement, discussing the elements of aiding and abetting, including whether specific direction is an element of aiding and abetting under customary international law;⁴

BEING SEISED OF the “Prosecution Request Seeking Leave to File Supplementary Authority and Supplementary Authority”, filed by the Prosecution on 27 September 2013 (“Request”) with an appendix, in which the Prosecution seeks leave to file excerpts of the *Taylor* Appeal Judgement as supplementary authority in its appeal (“Supplementary Authority”);⁵

NOTING the “Stanišić Defence Response to Prosecution Request Seeking Leave to File Supplementary Authority”, filed by Stanišić on 4 October 2013 (“Response”), in which Stanišić does not object to the filing of the Supplementary Authority to the extent that the Appeals Chamber of the SCSL “did not find cogent reasons in the interests of justice to depart from its holding regarding the *actus reus* [...] of aiding and abetting liability under Article 6(1) of the [SCSL] Statute and customary international law”;⁶

NOTING that Stanišić further responds that the remainder of the Supplementary Authority be rejected until the Request is fully reasoned, as the Request fails to show how the remainder of the

¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Judgement, 30 May 2013 (with confidential Appendix C) (“Trial Judgement”).

² Trial Judgement, paras 2362-2363.

³ Prosecution’s Notice of Appeal, 28 June 2013, para. 12; Prosecution Appeal Brief, 11 September 2013 (confidential; public redacted version filed on 25 September 2013) (“Prosecution Appeal Brief”), paras 131-153.

⁴ *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-A, Judgment, 26 September 2013 (“*Taylor* Appeal Judgement”), paras 353-486. See also *Taylor* Appeal Judgement, Concurring Opinion of Justice Shireen Avis Fisher on Aiding and Abetting Liability, paras 709-721.

⁵ Request, paras 1-2. See also Request, Appendix A. The portions of the *Taylor* Appeal Judgement which the Prosecution seeks leave to file are included in full in Appendix A of the Request.

Supplementary Authority is legally and factually relevant to the Prosecution’s appeal, thus violating paragraphs 4 and 13 of the Practice Direction⁷ and undermining Stanišić’s right to a comprehensive response to the Prosecution’s arguments;⁸

NOTING FURTHER that Stanišić responds that should the Request be admitted, he “reserves the right to make detailed submissions concerning the limits of [the Supplementary Authority’s] persuasive value”;⁹

NOTING that Simatović did not respond to the Request;

NOTING the “Prosecution Reply in Support of Request Seeking Leave to File Supplementary Authority and Supplementary Authority”, filed by the Prosecution on 8 October 2013 (“Reply”), in which the Prosecution submits, *inter alia*, that the Request does not violate Stanišić’s right to a comprehensive response and provides, as further proof of relevance, a table identifying issues in the Prosecution Appeal Brief which are supported by paragraphs from the Supplementary Authority;¹⁰

RECALLING paragraphs 7 through 10 of the Practice Direction, which state the rules for the inclusion of authorities relied upon;

CONSIDERING that a party may file supplementary authorities which may be pertinent to an issue to be decided in the case to bring briefs up-to date, provided that the issue has already been raised in the party’s briefs and that the supplemental authorities became available only after the filing of the briefs;¹¹

CONSIDERING that the Supplementary Authority is an excerpt from the *Taylor* Appeal Judgement which was rendered after the filing of the Prosecution Appeal Brief;

CONSIDERING that the Supplementary Authority refers to the elements of aiding and abetting and is thus pertinent to an issue raised in the Prosecution’s appeal;¹²

⁶ Response, para. 4, referring to *Taylor* Appeal Judgement, paras 476-480. See also Response, paras 14-18, 23.

⁷ Practice Direction on Formal Requirements for Appeals from Judgement, Doc. IT/201, 7 March 2002 (“Practice Direction”).

⁸ Response, paras 3, 19*bis*-23. Because paragraph 19 appears twice in the Response, the second paragraph 19, which begins with the words “The Appellant has failed”, is referred to here as paragraph “19*bis*”.

⁹ Response, para. 19.

¹⁰ Reply, para. 2. The Prosecution further states that it filed the entire aiding and abetting portion of the Supplementary Authority to provide context. See Reply, para. 3.

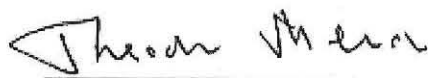
¹¹ See, e.g., *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution’s “Notice of Supplemental Authority”, 14 May 2007, p. 2; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution’s Request for Leave to File a Second Notice of Supplemental Authority, 10 July 2007, pp. 2-3; *Prosecutor v. Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37-AR65, Order Granting Leave to File Supplementary Authorities, 16 October 2002, p. 3.

¹² See Prosecution Appeal Brief, paras 131-153.

FOR THE FOREGOING REASONS,

HEREBY GRANTS the Request and **ACCEPTS** the Supplementary Authority as validly filed.

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



Judge Theodor Meron
Presiding

Dated this fifteenth day of November 2013,
At The Hague,
The Netherlands.

[Seal of the Tribunal]