

**UNITED
NATIONS**



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-95-9-T
Date: 11 October
2002
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IN TRIAL CHAMBER II

Before: Judge Florence Ndepele Mwachande Mumba, Presiding
Judge Sharon A. Williams
Judge Per-Johan Viktor Lindholm

Registrar: Mr. Hans Holthuis

Decision of: 11 October 2002

PROSECUTOR

v.

**BLAGOJE SIMIĆ
MIROSLAV TADIĆ
SIMO ZARIĆ**

**WRITTEN REASONS FOR DECISION ON
MOTIONS FOR ACQUITTAL**

The Office of the Prosecutor:

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Mr. Philip Weiner
Mr. David Re

Counsel for the Accused:

Mr. Igor Pantelić and Mr. Srdjan Vuković for Blagoje Simić
Mr. Novak Lukić and Mr. Dragan Krgović for Miroslav Tadić
Mr. Borislav Pisarević and Mr. Aleksandar Lazarević for Simo Zarić

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I. INTRODUCTION

1. 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 (“Tribunal”) is seized of motions for acquittal filed pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), by the three accused in the present case, Blagoje Simić, Miroslav Tadić and Simo Zarić (collectively, “Accused”), on 13 September 2002.¹ The Office of the Prosecutor (“Prosecution”) filed its consolidated response on 27 September 2002.²

2. The Accused in this case have moved for total acquittal pursuant to Rule 98 *bis* of the Rules on charges brought against them in the Fifth Amended Indictment³ (“Indictment”).

3. Additionally, the Simić Defence and Tadić Defence challenged the form of the Indictment in relation to Count 1 in their motions.⁴ The Trial Chamber does not make any findings on this challenge in the present Decision, as motions alleging defects in the form of the indictment are to be raised pursuant to Rule 72(A)(ii) of the Rules as a preliminary motion, or in the case of new charges arising from the amendment of an indictment, within thirty days of such amendment, pursuant to Rule 50(C) of the Rules. However, the Trial Chamber will consider this matter at the time of Judgement, that is, after all the evidence has been adduced.

¹“Defendant Blagoje Simić’s Motion for Judgement of Acquittal”, 13 September 2002 (“Simić Motion”); “Motion for Judgement of Acquittal of the Accused Miroslav Tadić”, 13 September 2002 (“Tadić Motion”); “Motion for Judgement of Acquittal filed by the Accused Simo Zarić Pursuant to Rule 98 *bis*”, 13 September 2002 (“Zarić Motion”); and (collectively, “Motions”).

²“Prosecutor’s Response to the Motion of the Accused Blagoje Simić, Miroslav Tadić, and Simo Zarić for Judgement of Acquittal,” filed confidentially on 27 September 2002 (“Prosecution’s Response”).

After granting the Prosecution an extension of one week to file its response (Decision, 19 September 2002), the Trial Chamber ordered the Prosecution to file a public, redacted version of its response on 27 September 2002, in addition to the confidential response, Order of 24 September 2002. On 26 September 2002, the Prosecution filed a “Motion Requesting Extension of Time to File Public Redacted Version of Prosecution Response to Accuseds’ Motions for Acquittal Pursuant to 98 *bis*”. The Trial Chamber denied this motion and again ordered the Prosecution to file both a confidential and redacted response on 27 September 2002, Decision on Prosecution Motion for Extension of Time to File Redacted Response, 27 September 2002. The Prosecution, however, did not follow this order and on 30 September 2002, the Prosecution filed a “Motion Pursuant to Rule 127(A)(ii) to File Public Redacted Version of the Prosecutor’s Response to the Accuseds’ Motions for Acquittal Pursuant to Rule 98 *bis* and Corrigendum to the Confidential Prosecutor’s Response to the Motions for Judgement of Acquittal Made by the Accused Pursuant to Rule 98 *bis* and Filed on the 27th September 2002,” 30 September 2002. The Trial Chamber allowed the public redacted version to be filed, finding that it was “just and proper for a public record for the Confidential Response to be filed in the form of the Public Redacted Response” and that neither the Defence nor the Trial Chamber were prejudiced by the late filing, as both had previously received a confidential version, Decision on Prosecution Motion to Treat Redacted Response as Validly Filed Pursuant to Rule 127(A)(ii), 2 October 2002.

³ The Fifth Amended Indictment was filed on 30 May 2002. The trial against the three accused had begun under the Third Amended Indictment, filed 24 April 2001. The Third Amended Indictment was amended, and the Fourth Amended Indictment was filed on 9 January 2002. The Fourth Amended Indictment was amended following the separation of Milan Simić from this case. The Fifth Amended Indictment does not bring any changes in the charges or factual allegations related to the Accused.

⁴ Simić Motion, paras 3-6; Tadić Motion, paras 15-24.

4. This written Decision follows the oral decision on the motions for acquittal delivered by the Trial Chamber on 9 October 2002.

II. RULE 98 *BIS*

5. Rule 98 *bis* of the Rules provides:

(A) An accused may file a motion for the entry of judgement of acquittal on one or more offences charged in the indictment within seven days after the close of the Prosecutor's case and, in any event, prior to the presentation of evidence by the defence pursuant to Rule 85 (A)(ii).

(B) The Trial Chamber shall order the entry of judgement of acquittal on motion of an accused or *proprio motu* if it finds that the evidence is insufficient to sustain a conviction on that or those charges.

6. A Trial Chamber shall acquit under Rule 98 *bis* (B) if "the evidence is insufficient to sustain a conviction" on one or more of the charges in the Indictment. The standard to be applied under Rule 98 *bis* of the Rules has been interpreted by the Appeals Chamber in the *Jelisić* Appeal Judgement to mean that:

a case in which, in the opinion of the Trial Chamber, the prosecution evidence, if believed, is *insufficient for any reasonable trier of fact to find that guilt has been proved beyond reasonable doubt*. In this respect, the Appeals Chamber follows its recent holding in the *Delalić* appeal judgement, where it said: "[t]he test applied is whether there is evidence (if accepted) upon which a reasonable tribunal of fact *could* be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question". The capacity of the prosecution evidence (if accepted) to sustain a conviction beyond reasonable doubt by a reasonable trier of fact is the key concept; thus the test is not whether the trier would in fact arrive at a conviction beyond reasonable doubt on the prosecution evidence (if accepted) but whether it could. At the close of the case for the prosecution, the Chamber may find that the prosecution evidence is sufficient to sustain a conviction beyond reasonable doubt and yet, even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence, the prosecution has not in fact proved guilt beyond reasonable doubt.⁵

7. Additionally, a Rule 98 *bis* motion will succeed if an essential ingredient for a crime was not made out in the Prosecution's case; for, if on the basis of evidence adduced by the Prosecution, an element required as a matter of law to constitute the crime is missing, that evidence would also be insufficient to sustain a conviction.⁶

8. Since the *Jelisić* Appeal Judgement, numerous Trial Chambers have applied this standard.⁷ This Trial Chamber adopts the standard enunciated by the *Jelisić* Appeal Judgement. Thus, on a

⁵ *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001, ("*Jelisić* Appeal Judgement"), para. 37, (internal citations omitted) (emphasis added).

⁶ See *Jelisić* Appeal Judgement, paras 59-61; *Prosecutor v. Duško Sikirica, Damir Došen, and Dragan Kolundžija*, Case No. IT-95-8-T, Judgement on Defence Motions to Acquit, 3 September 2001, para. 9; and *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Case No. ITCR-99-52-T, Reasons for Oral Decision of 17 September 2002 on The Motions for Acquittal, 25 September 2002, para. 19.

⁷ See, e.g., *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-T, Decision on Motion for Acquittal, 28 Feb. 2002, ("*Naletilić* Decision"), para. 10; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision on the Motion for the Entry of Acquittal of the Accused Stanislav Galić, 3 October 2002, para. 10.

motion for acquittal under Rule 98 *bis* the test to be applied is, whether there is “evidence (*if accepted*) upon which a reasonable tribunal of fact *could* be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question.”⁸

9. In line with prior decisions, Rule 98 *bis* (B) of the Rules allows for a judgement of acquittal to be entered with regard to (i) an entire count of the indictment or (ii) a factual incident or incident cited in the indictment in support of the offence, if the Prosecution’s evidence on the entire count or on that particular incident, does not rise to the level laid down in Rule 98 *bis* (B).⁹

10. On the basis of the above, the Trial Chamber will direct its attention to the specific allegations in the Indictment. The Trial Chamber will not review the various forms of liability under Article 7(1) in substance, but will review each allegation under each Count generally.

III. COUNT 1 (PERSECUTION)

11. The Indictment charges the Accused with persecution as a crime against humanity (Count 1), pursuant to Article 5(h) and Article 7(1) of the Statute of the Tribunal. The underlying acts to support this charge include the forcible take-over of the municipality of Bosanski Šamac; the unlawful arrest and confinement of non-Serb civilians on political, racial or religious grounds and not for their protection and safety; the cruel and inhumane treatment, including beatings, torture, forced labour and confinement under inhumane conditions of non-Serb civilians; the deportation, forcible transfer and expulsion of non-Serb civilians; the wanton and extensive destruction, plundering and looting of property; and the destruction or wilful damage of institutions dedicated to religion. Additionally, Blagoje Simić is charged with the issuance of orders, policies, decisions and other regulations in the name of the Serb Crisis Staff and War Presidency which violated the rights of non-Serbs, and Simo Zarić is charged with the interrogation of non-Serb civilians who had been arrested and detained and forcing them into signing false and coerced statements.

A. FACTUAL ALLEGATIONS IN RELATION TO PERSECUTION

1. Forcible Take-over

12. The Defence¹⁰ submits that there is insufficient evidence to support the charge of the

⁸ *Jelisić* Appeal Judgement, para. 36. (emphasis on “if accepted” added)

⁹ *Naletilić* Decision, para. 11; *Prosecutor v. Kvočka et al*, Case No. IT 98-30/1-T, Decision on Defence Motions for Acquittal, 15 Dec. 2000, paras 6-9; *Prosecutor v. Kunarac et al*, Case No. IT 96-23/1-T, Decision on Motion for Acquittal, 3 July 2000, para. 26; *Prosecution v. Kordić and Čerkez*, Case No. IT-95-14/2-T, Decision on Defence Motions for Judgement of Acquittal, 6 Apr. 2000, paras 29-36.

¹⁰ “Defence” will be used to refer to the three accused when the arguments by each accused are substantially the same. In the case of contradictory or additional submissions by one accused, the specific accused will be named.

Accuseds' participation in the forcible take-over of Bosanski Šamac¹¹ or Odžak.¹²

13. The Prosecution submits that clear evidence exists of the participation of Blagoje Simić,¹³ Miroslav Tadić¹⁴ and Simo Zarić¹⁵ in the forcible take-over of Bosanski Šamac. The Prosecution refers to the positions allegedly held by the Accused as additional support for this charge.¹⁶

14. The Trial Chamber finds that sufficient evidence exists, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of Blagoje Simić, Miroslav Tadić and Simo Zarić with regard to the forcible takeover of Bosanski Šamac.

2. Unlawful arrests, detention or confinement

15. The Simić Defence submits that there is no evidence to support any allegation of unlawful arrest, detention or confinement of Bosnian Croats, Bosnian Muslims and other non-Serb civilians on political, racial or religious grounds and not for their protection and safety,¹⁷ while the Tadić Defence and Zarić Defence submit that they did not participate in the unlawful arrest, detention or confinement of non-Serb civilians.¹⁸ The Simić Defence further submits that there is evidence that the Bosnian Serb police forces conducted criminal proceedings against suspects, based on the "prima facie" principle.¹⁹

16. The Prosecution submits that clear evidence exists of the participation of Blagoje Simić,²⁰ Miroslav Tadić²¹ and Simo Zarić²² in the unlawful arrest and confinement of numerous non-Serbs

¹¹ Simić Motion, para. 9(a); Tadić Motion, para. 33; Zarić Motion, para. 16, citing witnesses Sulejman Tihic (T.1359), Witness N (T.6330) and Witness A (T.10912).

¹² Simić Motion, para. 9(a); Tadić Motion, para. 34.

¹³ Prosecution Response, para. 28, citing witnesses Stevan Todorović (T.9043, 9077-84) and Sulejman Tihic (e.g., T.1300 and 1368-69), and documentary evidence P77, P79, P89, P141 and P142.

¹⁴ Prosecution Response, para. 29, citing witnesses Esad Dagović (T.3915-18), Ibrahim Salkić (T.3252-55), Witness E (T.7660-62), Jelena Kapetanović (e.g., T.8912-15) and Hasan Subasić (T.10933-40), and documentary evidence P138.

¹⁵ Prosecution Response, para. 31, citing witnesses including Esad Dagović (T.3915-18), Hasan Subasić (T.10933-40), Stevan Todorović (T.9087-89, 9110), Blaz Paradžik (T.8243-46), Ibrahim Salkić (no cite), Dragan Lukač (T.1703-04), Witness N (T.6046-56) and Witness M (T.5010-13), and audio-visual evidence P16.

¹⁶ Prosecution Response, para. 28(e) and paras 31(a) and (b).

¹⁷ Simić Motion, para. 9(c).

¹⁸ Tadić Motion, paras 35-36; Zarić Motion, para. 17, which argues that Stevan Todorović was responsible for the arrest and detention of non-Serb civilians.

¹⁹ Simić Motion, para. 9(c).

²⁰ Prosecution Response, para. 32, citing witnesses Stevan Todorović (e.g., T.9114-05, 9137-39, 9165-66), Dragan Lukač (T.1662), Sulejman Tihic (e.g., T.1372-73), Dragan Delić (T.6667-69), Jelena Kapetanović (T.8946, 8979), Hasan Subasić (T.10960-61) and Witness O (P143), and documentary evidence P71.

²¹ Prosecution Response, para. 34, citing witnesses Stevan Todorović (T.9498-9503), Witness C (T.7939-41), Witness Q (T.11743-44, linked to exchanges) and including Witness M (T.5355-63), Witness N (T.6153-54) and Hasan Subasić (T.11123-25), and documentary evidence P71 to show payment for the end of detention.

²² Prosecution Response, para. 33, citing witnesses to show his position in the 4th Detachment, which the Prosecution argues played a significant role in arrests including Sulejman Tihic (T.1329), Jelena Kapetanović (T.10367), Osman Jasarević (T.10487-88), Kemal Bobić (T.11497-99), Stevan Todorović (e.g., T.9124-26) and Witness Q (T.11735-45).

on political, racial or religious grounds, and not for their protection or safety.²³ The Prosecution further submits that nearly all the witnesses who gave evidence of being arrested and incarcerated attested to the prisoners being Croatian or Muslim civilians.²⁴

17. The Trial Chamber finds that the Prosecution has adduced sufficient evidence, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of Blagoje Simić, Miroslav Tadić and Simo Zarić with regard to the unlawful arrest, detention and confinement of Bosnian Croats, Bosnian Muslims and other non-Serb civilians on political, racial or religious grounds.

3. Cruel and inhumane treatment

18. The Defence submits that no evidence has been presented to show that any of the accused participated in the cruel and inhumane treatment of Bosnian Croats, Bosnian Muslims and other non-Serb civilians, including torture, forced labour assignments and confinement under inhumane conditions.²⁵ The Simić Defence does not challenge the evidence of beatings, torture and confinement under inhumane conditions, but rather, the participation of Blagoje Simić,²⁶ while the Zarić Defence submits that Simo Zarić condemned, rather than participated in, the cruel and inhumane treatment.²⁷ The Simić Defence and the Tadić Defence submit that the Prosecution failed to present evidence of “forced labour”, arguing that the work obligation was organised in accordance with the legislation of the government of the Republika Srpska and the “Ministry of Defence”.²⁸

19. The Prosecution submits that clear evidence exists of the participation of Blagoje Simić,²⁹ Miroslav Tadić³⁰ and Simo Zarić³¹ in the cruel and inhumane treatment of Bosnian Croats, Bosnian Muslims and other non-Serb civilians on political, racial or religious grounds. The Prosecution

²³ Prosecution Response, para. 31 (the Trial Chamber takes note of the mis-numbering of the Prosecution Response and refers here the second para. 31).

²⁴ Prosecution Response, second para. 31.

²⁵ Simić Motion, para. 9(d); Tadić Motion, paras 38 and 40; Zarić Motion, para. 18.

²⁶ Simić Motion, para. 9(d).

²⁷ Zarić Motion, para. 18, citing witnesses Hasan Bičić (T.2890), Muhamed Bičić (T.3056-58), Sulejman Tihic (T.3708), Witness N (T.6350), and Dragan Delic (T.6769) to illustrate that conditions of confinement and treatment at the JNA barracks, Brčko, where he transferred prisoners from the TO building in Bosanski Šamac, were better than those at the TO.

²⁸ Simić Motion, para. 9(d); Tadić Motion, para. 40.

²⁹ Prosecution Response, para. 38, citing witnesses Stevan Todorović (T.9140-45, 10109-12), Witness M. (T.5133-34, 5140) and Witness K (T. 4653-54), and documentary evidence P141.

³⁰ The Prosecution Response only cites witnesses related to forced labour for Miroslav Tadić. See *supra*, fn. 33.

³¹ Prosecution Response, para. 37, citing witnesses Sulejman Tihic (T.1413, 1395-96), Izet Izetbegović (no cite), Ibrahim Salkić (e.g., T.3245-50), Witness M (T.5029-33), Kemal Mehinović (T.7404-13), Stevan Todorović (T.9124-27) and Esad Dagović (T.4007-09), and documentary evidence P81 and P141.

further asserts that sufficient evidence exists to establish the involvement of Blagoje Simić,³² Miroslav Tadić³³ and Simo Zarić³⁴ in forced labour.

20. The Trial Chamber finds that sufficient evidence exists, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of Blagoje Simić, Miroslav Tadić and Simo Zarić with regard to the cruel and inhumane treatment of non-Serb civilians.

4. Deportation, forcible transfer and expulsion

21. As both the Defence and the Prosecution combined their arguments on deportation as a form of persecution, with their arguments related to Counts 2 and 3, the arguments of the parties are presented below.

22. The Trial Chamber finds that sufficient evidence exists, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of the Accused with regard to deportation, forcible transfer and expulsion, as a form of persecution.

5. Wanton and extensive destruction, plundering and looting

23. The Defence submits that the Prosecution has failed to present sufficient evidence in relation to this offence, with the Tadić Defence and Zarić Defence arguing that no evidence has been presented to link either accused with the acts alleged.³⁵ The Simić Defence further submits that the Prosecution failed to demonstrate the occurrence of such an event on a systematic and widespread basis.³⁶

24. The Prosecution submits that there is sufficient evidence to indicate the involvement of Blagoje Simić in wanton and extensive destruction, plundering and looting of non-Serb property.³⁷ In relation to Miroslav Tadić and Simo Zarić the Prosecution submits that the evidence implicating the two men in forced labour also implicates them in the looting.³⁸

³² Prosecution Response, para. 41, citing witness Stevan Todorović (T.9174-77), and documentary evidence P 86 and P87.

³³ Prosecution Response, para. 42, citing witnesses Witness L (T.4641), Snjezana Delić (T.6449-53) and Nusret Hadzijusufović (e.g., T.6886, 6928-31).

³⁴ Prosecution Response, para. 43, citing witnesses Witness L (T.4641), Snjezana Delić (T.6449-53), Witness M (T.5080-84, 5093-96), Safet Dagović (T.7232-34) and Witness K (T.4669).

³⁵ Tadić Motion, para. 42; Zarić Motion, para. 21.

³⁶ Simić Motion, para. 9(f).

³⁷ Prosecution Response, para. 44 (the Trial Chamber takes note of the mis-numbering of the Prosecution Response and refers here to the second para. 44), citing witness Stevan Todorović (e.g., T.9188-90, 9029), and documentary evidence P88, P127 and P49.

³⁸ Prosecution Response, paras 44 and 45.

25. The Trial Chamber first notes that the relevant paragraphs in the Indictment state this offence to comprise, “the wanton and extensive destruction, plundering and looting of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock”.³⁹ The arguments submitted by the parties do not address the distinct parts i.e., destruction, plunder and looting, which form the basis of the offence charged. Nevertheless, the Trial Chamber is of the view that a review of the evidence available at this stage must be undertaken with respect to the various acts which form the basis of the offence charged.

26. Having reviewed the evidence presented, the Trial Chamber finds that the Prosecution has adduced sufficient evidence, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond a reasonable doubt of the involvement of Blagoje Simić, Miroslav Tadić and Simo Zarić in the wanton and extensive plundering and looting of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock.

27. In the case of “destruction”, the evidence referred to by the Prosecution does not specifically link any of the Accused to the destruction of dwellings, businesses, personal property or livestock. Witnesses have testified to such destruction having taken place⁴⁰ but with no further evidence linking the Accused to the destruction. Likewise, Izet Izetbegović,⁴¹ Hasan Bičić⁴² and Kemal Mehinović⁴³ testified about destruction of houses and property by shelling, but their evidence did not give an indication as to who was responsible for the shelling or where it came from. Witness K gave evidence that her vacation home was burned down in December 1991 and subsequent information obtained from a hired detective revealed that the fire was allegedly caused by two members of the 4th Detachment.⁴⁴ This evidence, however, is inconclusive. No further evidence linking the Accused to this aspect of the offence has been led by the Prosecution.

28. The Trial Chamber finds that there is insufficient evidence concerning the involvement of Blagoje Simić, Miroslav Tadić and Simo Zarić in the wanton and extensive destruction of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock. There is, therefore, no case for Blagoje Simić, Miroslav

³⁹ Indictment, paras 12(e), 13(f), 14(e) and 15(f).

⁴⁰ Izet Izetbegović (T. 2268, 2270), Hasan Bičić (T.2759-60), Muhamed Bicić (T.3042), Witness L (T.4365-66), Witness K (T.4578-79, 4581, 4607), Witness M (T.5055, 5090, 5096-98, 5101), Kemal Mehinović (T.7518), Alija Fitozović (T.8444) and Witness A (P132, paras 18-19).

⁴¹ T. 2752-53.

⁴² T. 2862.

⁴³ T. 7518.

⁴⁴ T. 4578-79, 4582.

Tadić and Simo Zarić, to answer in relation to the aspect of “destruction” in paragraphs 13(f), 14(e) and 15(f) of the Indictment.

6. Destruction or wilful damage of institutions dedicated to religion

29. The Simić Defence submits that these events occurred due to the war operations.⁴⁵ The Tadić Defence and Zarić Defence argue that the Prosecution failed to establish any link to connect either man to the destruction of institutions dedicated to religion.⁴⁶

30. The Prosecution submits that “circumstantial evidence” links Blagoje Simić to the destruction of the religious institutions, based largely on his role as “the most powerful civilian in the municipality of Bosanski Šamac”.⁴⁷ The Prosecution submits that Miroslav Tadić’s link to the destruction of institutions dedicated to religion is by way of his involvement in the forced labour programme, which was responsible for clearing the rubble from the blown up mosque and the dismantling of the Catholic church.⁴⁸ In relation to Simo Zarić, the Prosecution refers to the evidence that Simo Zarić, together with a group of Serbs, took shelter with forced labourers shortly before an explosion that destroyed the mosque in Odžak, and the evidence of his radio broadcast accusing the Croatian side of destroying the mosque.⁴⁹

31. The Trial Chamber is not satisfied that the totality of this evidence provides a sufficient basis upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of the Accused on this particular allegation. The Trial Chamber rejects the Prosecution submission and finds that, although there is evidence on the destruction of religious institutions, there is insufficient evidence on the link between the Accused and the alleged destruction of the religious institutions. Witnesses testified to such destruction having taken place with no further evidence linking the Accused to the destruction.⁵⁰ Witness K gave evidence that she heard Simo Zarić on Radio Serbian Šamac discussing the destruction of the Catholic church in Odžak, saying that the “Ustasha” had wanted to shell a department store and missed, thereby hitting the church and blowing it up instead. He also allegedly spoke on the radio about the “Zengas and Ustasha” blowing up the mosque in Bosanski Šamac. She further said that neither of these statements were true, as it

⁴⁵ Simić Motion, para. 9(g).

⁴⁶ Tadić Motion, para. 43; Zarić Motion, para. 22.

⁴⁷ Prosecution Response, paras 48-49, citing witnesses Stevan Todorović (T.10226-32) and Nusret Hadžijusufović (T.6950-52).

⁴⁸ Prosecution Response, para. 50.

⁴⁹ Prosecution Response, paras 51-52, citing Witness M (T.5092-93), Witness L (T.4320-26) and Witness K (T.4659-60).

⁵⁰ Stevan Todorović (T. 9178), Witness Q (T.11694-95, 11700-04, 11789-90, 11790-92, 11792-93, 11794-98, 11828-30), Witness M (T.5090-91, 5125-27, 5296-98, 5299, 5302-04), Witness L (T.4320-22, 4326-29), Sulejman Tihic (T.1247-48, 1496) and Hajrija Drlačić (T.8042, 8088).

was the Serbian soldiers who blew up the church.⁵¹ Hajrija Drljačić believed that Muslims dismantled the Catholic church in Bosanski Šamac on the orders of Serbs.⁵² Witness L gave evidence that Simo Zarić together with other Serbs took shelter in the cellar of the SUP building in Odžak and that shortly after, an explosion destroyed the mosque.⁵³ This evidence, however, is inconclusive. No other evidence concerning this aspect of the offence has been led by the Prosecution. Accordingly, the Accused have no case to answer in respect of the whole of this aspect of the offence as contained in paragraphs 13(g), 14(f) and 15(g) of the Indictment.

7. Issuance of orders, policies, decisions and other regulations violating the rights of non-Serbs
(Blagoje Simić only)

32. The Simić Defence submits that the Prosecution failed to prove that Blagoje Simić voted for, issued or adopted discriminatory legislation, which violated the rights of the non-Serb population. The Simić Defence contends that Blagoje Simić did not act in the name of the Serb Crisis Staff or the War Presidency and there is no evidence that Blagoje Simić himself was the author of the Crisis Staff documents that he signed.⁵⁴

33. The Prosecution submits that there is sufficient evidence on the allegation that Blagoje Simić participated in the issuance of orders, policies, decisions and other regulations violating the rights of non-Serbs. The Prosecution referred to the evidence of witnesses whose testimony indicated that, in the period following the take-over, non-Serbs were required to wear white armbands, were prohibited from gathering in groups of more than three and a curfew was imposed in town. The Prosecution also submits that there is evidence establishing that Blagoje Simić had knowledge of the conditions in the detention camps.⁵⁵

34. The Trial Chamber finds that sufficient evidence exists, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of Blagoje Simić with regard to the issuance of orders, policies, decisions and other regulations violating the rights of non-Serbs.

8. Interrogations and forced signing of false and coerced statements (Simo Zarić only)

35. Although the Zarić Defence does not deny that Simo Zarić took statements from a certain number of detained individuals at the SUP building in Bosanski Šamac and at the JNA military

⁵¹ T. 4659-60, 4798.

⁵² T. 8092.

⁵³ T. 4324-25.

⁵⁴ Simić Motion, paras 9(b) and 16.

barracks in Brčko, it argues that the evidence does not show that Simo Zarić forced any of the witnesses to sign false and coerced statements.⁵⁶

36. The Prosecution submits that the evidence indicates Simo Zarić's involvement in the interrogation of non-Serb prisoners at the SUP building and the JNA military barracks in Brčko. The Prosecution referred to the evidence of witnesses whose testimony indicated that they had been beaten, were bruised and covered in blood at the time of such interviews, and that it was in such circumstances that Simo Zarić obtained false statements and forced the prisoners to sign the statements.⁵⁷

37. The Trial Chamber finds that sufficient evidence exists, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt that Simo Zarić participated as alleged.

B. “ACTING IN CONCERT WITH OTHERS”

38. The Tadić Defence and the Zarić Defence made submissions on this issue while the Simić Motion does not raise the matter. Both the Tadić Motion⁵⁸ and the Zarić Motion⁵⁹ submit that the Prosecution has not proven that the Accused “acted in concert” with other Serb civilian or military officials with respect to the offences in Count 1. The Zarić Defence also submits that Prosecution Exhibit P3, “Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances” (“Variant A&B”) is not reliable and cannot have any evidentiary weight in this case.⁶⁰

39. The Prosecution submits that it has adduced evidence of the plan, the participation of each of the accused persons and that their intention to participate can be inferred. The Prosecution argues

⁵⁵ Prosecution Response, para. 35, citing witnesses including Witness G (T.4048-50), Witness K (T.4600) and Witness M (T.5027-28), and documentary evidence P71, P91, P92, P124 and P125.

⁵⁶ Zarić Motion, para. 19, citing witnesses Sulejman Tihic (T.1386, 1404, 1407), Muhamed Bičić (T.3064-66) and Hasan Bičić (T.2893-95, 2912).

⁵⁷ Prosecution Response, para. 36 (the Trial Chamber again notes that the Prosecution Response is mis-numbered and refers to the first para. 36), citing witnesses Muhamed Bičić (T.2968-70), Hasan Bičić (T.2693-94, 2700-01, 2894) and Osman Jasarević (T.10501-02, 10523-25).

⁵⁸ Tadić Motion, paras 35 and 37, which argues that the Prosecution did not prove that Miroslav Tadić, acting in concert together with Blagoje Simić and Simo Zarić participated in the unlawful arrest, detention or confinement of Bosnian Croats, Bosnian Muslims and other non-Serb civilians nor participated in the cruel and inhumane treatment of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including beatings, torture, forced labour assignments and confinement under inhumane conditions.

⁵⁹ Zarić Motion, paras 10, 11 and 12, which argues that there is no evidence to show that Simo Zarić acted in concert together with Blagoje Simić or Miroslav Tadić, or with other Serb civilian or military officials. Additionally, it is argued that the Prosecution did not present any evidence showing the existence of some previous agreement between the three accused and with others, nor was it proven that some general plan existed on a higher level concerning the persecution and deportation of the non-Serb population.

⁶⁰ Zarić Motion, para. 12.

that by their participation in the underlying acts or omissions alleged in the Indictment, the Accused must have acted in accordance with a pre-arranged plan to persecute.⁶¹ The Prosecution referred to evidence of the positions held by the Accused and their role in the take-over of Bosanski Šamac,⁶² the method of its execution in accordance with Variant A&B,⁶³ and the conduct of the Bosanski Šamac Crisis Staff after the take-over.⁶⁴ The Prosecution argues that the common purpose liability theory is applicable for the attribution of responsibility to the Accused in relation to the crime of persecution.⁶⁵ The Prosecution also submits in the alternative that the evidence is sufficient to establish that the Accused aided and abetted the offences alleged against them.⁶⁶

40. Concerning the evidentiary weight to be accorded to Variant A&B (Exhibit P3), the Trial Chamber first stresses that in line with the jurisprudence of the Tribunal on this issue, the reliability and credibility of evidence presented by the Prosecution will not be assessed at mid-trial motions for acquittal unless it can be said that the Prosecution case has “completely broken down”.⁶⁷ This is not the case here, and therefore, such an assessment will only be made after the presentation of all the evidence.

41. The common purpose theory of liability put forward by the Prosecution will not be discussed substantially by the Trial Chamber at this stage. However, the Trial Chamber finds that sufficient evidence exists, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt that Blagoje Simić, Miroslav Tadić and Simo Zarić acted in concert with others in relation to the crime of persecution in Count 1.

C. DISCRIMINATORY INTENT REQUIRED FOR PERSECUTION

42. The Defence submits that the Prosecution failed to prove the requisite discriminatory intent on political, racial or religious grounds in relation to the Accused for the acts alleged under Count 1.⁶⁸ The Zarić Defence refers to evidence of the mixed family background of Simo Zarić and states that Simo Zarić was never a member of any of the three nationalist parties that existed in the territory of Bosnia Herzegovina to support its assertion.⁶⁹

⁶¹ Prosecution Response, para. 15.

⁶² Prosecution Response, para. 16.

⁶³ Prosecution Response, paras 17-18.

⁶⁴ Prosecution Response, para. 19.

⁶⁵ Prosecution Response, paras 20-25.

⁶⁶ Prosecution Response, para. 26.

⁶⁷ *Kordić and Čerkez* Decision, para. 28, and *Kvočka* Decision, para. 17.

⁶⁸ Simić Motion, para. 21; Tadić Motion, para. 44; Zarić Motion, paras 13-14, 26 and 27. The Zarić Defence cites *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, Judgement, 15 Mar. 2002, (“*Krnojelac* Judgement”), para. 436, for the assertion that the discriminatory intent must relate to a specific act that is being charged as persecution and not to general perpetration.

⁶⁹ Zarić Motion, para. 13.

43. The Prosecution submits that sufficient evidence has been presented upon which the Trial Chamber could convict each accused in relation to each element of persecution.⁷⁰

44. The Trial Chamber finds that sufficient evidence exists, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt that Blagoje Simić, Miroslav Tadić, and Simo Zarić possessed the necessary discriminatory intent to sustain a conviction for the crime of persecution as a crime against humanity.

IV. COUNTS 2 AND 3 (DEPORTATION AND TRANSFER)

45. The Prosecution charges all accused in the Indictment with deportation, as a crime against humanity, pursuant to Article 5(d) and Article 7(1) of the Statute (Count 2), and unlawful deportation or transfer, as a grave breach of the Geneva Conventions of 1949, pursuant to Article 2(g) and Article 7(1) of the Statute (Count 3). In relation to these counts, the Indictment alleges that from about 17 April 1992 to about 31 December 1993, for Blagoje Simić and Miroslav Tadić, and from about 17 April 1992 to at least 31 December 1992, for Simo Zarić, the Accused planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the unlawful deportation and forcible transfer of hundreds of Bosnian Croat, Bosnian Muslim and other non-Serb civilians, including women, children and the elderly, from their homes in the Bosanski Šamac municipality to other countries or to other parts of Bosnia and Herzegovina not controlled by Serb forces.⁷¹

46. The Defence submits that the Prosecution failed to present sufficient evidence to support the charges of deportation or transfer.⁷² The Defence do not challenge the fact that “exchanges” or “so-called exchanges” took place, or even the involvement of at least one of the accused in “exchanges”,⁷³ but rather, it challenges that the acts constituted deportation or a form of persecution, specifically since “all three ethnic groups were involved in [the] process”,⁷⁴ or due to the involvement of an international organisation.⁷⁵ Additionally, the Simić Defence challenges the causal link between the acts and conduct of Blagoje Simić and the consequences which could be considered as criminal acts.⁷⁶

⁷⁰ Prosecution Response, paras 8-9. Under various acts alleged under Count 1, the Prosecution expands on the evidence it argues supports the finding of discriminatory intent. See, e.g. Prosecution Response, paras 28(j), 31, 32(a) and 35.

⁷¹ Indictment, paras 17-20.

⁷² Simić Motion, para. 9(e); Tadić Motion, paras 28 and 48; Zarić Motion, paras 4(e), 20, 28-29.

⁷³ Tadić Motion, paras 28 and 30; Zarić Motion, para. 4(e)(acknowledging one exchange).

⁷⁴ Simić Motion, para. 9(e).

⁷⁵ Zarić Motion, para. 4(e); Simić Motion, para. 9(e).

⁷⁶ Simić Motion, para. 27.

47. The Defence further submits that the elements of the crimes of deportation as a crime against humanity, or unlawful deportation or transfer as a grave breach, as defined in the jurisprudence of the Tribunal, have not been satisfied.⁷⁷ Specifically, two of the accused submit that the Prosecution has not shown that the displacement was involuntary.⁷⁸

48. The Prosecution argues that sufficient evidence exists to establish the responsibility of Blagoje Simić,⁷⁹ Miroslav Tadić⁸⁰ and Simo Zarić⁸¹ for deportation as a form of persecution, deportation as a crime against humanity, and unlawful deportation and transfer as a grave breach of the Geneva Conventions.⁸² The Prosecution submits that the deportation of non-Serbs is evident from the change in demographics in Bosanski Šamac.⁸³ The Prosecution asserts that deportation was effected in various ways including the incarceration of civilians in various locations around Bosnia and Herzegovina, the incarceration of civilians outside the republic, the transfer of a large number of civilians to the village of Zasavica, the expulsion of civilians to other parts of the republic, and the expulsion of persons to other countries.⁸⁴ The Prosecution submits that people were exchanged who did not want to go voluntarily, expressing either that they did not want to leave Bosanski Šamac⁸⁵ or were forced to leave due to the persecution.⁸⁶ The Prosecution further claims that as non-Serbs were removed from their homes, Serb refugees were moved in.⁸⁷

49. The Trial Chamber finds that sufficient evidence exists, if accepted, upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of Blagoje Simić, Miroslav Tadić, and Simo Zarić on both Counts 2 and 3.

⁷⁷ Simić Motion, para. 19; Tadić Motion, paras 49-50; Zarić Motion, para. 29, citing *Krnojelac* Judgement, para. 474, fn. 428-30.

⁷⁸ Tadić Motion, para. 50; Zarić Motion, para. 29, citing *Prosecutor v. Krstić*, Trial Chamber Judgement, 2 Aug. 2001, para. 529.

⁷⁹ Prosecution Response, paras 62-69, citing witnesses including Sulejman Tihic (T.1345-48), Dragan Lukač (T.1636-38), Izet Izetbegović (T.2221-35), Witness P (T.11542), Stevan Todorović (T.9165-66) and Nusret Hadžijusufović (T.6903-04), and documentary evidence P71, P83 and P84.

⁸⁰ Prosecution Response, paras 70-72, citing witnesses including Stevan Todorović (T.9498-9502), Ediba Bobić (T.11282-83), Esad Dagović (T.4010) and Witness O (T.11904-05), and documentary evidence P139.

⁸¹ Prosecution Response, paras 73-76, citing witnesses including Izet Izetbegović (T.2286-93) and Witness Q (T.9152, 9159-60), and documentary evidence P129.

⁸² Prosecution Response, paras 62-76.

⁸³ Prosecution Response, para. 56, citing witnesses Sulejman Tihic (T.1245) and Stevan Todorović (T.10175-77), and documentary evidence P1 and P133.

⁸⁴ Prosecution Response, paras 57-59, citing witnesses including Witness N (e.g., T.6078), Kemal Mehinović (T.7464), Sulejman Tihic (T.1497), Dragan Lukač (T.1791-92) and Witness P (T.11595-601).

⁸⁵ Prosecution Response, para. 60, citing witnesses Hajira Drljačić (T.8127-28) and Jelena Kapetanović (T.10343).

⁸⁶ Prosecution Response, para. 60, citing witnesses including Dragan Lukač (T.1814), Hasan Bičić (T.2757) Witness E (T.7732) and Witness A (T.11036-37), and documentary evidence P129 and P132.

⁸⁷ Prosecution Response, paras 60-61, citing witnesses Nusret Hadžijusufović (T.6968-69) and Hajrija Drljačić (T.8061-64, 8124-25), and documentary evidence P139.

V. CONCLUSION

50. After a careful consideration of the arguments raised and an extensive review of all of the evidence submitted in documentary, audio-visual and testimonial form, the Trial Chamber concludes that the Prosecution has presented sufficient evidence to meet the standard under Rule 98 *bis* of the Rules on all of the counts the Accused are charged with, except as discussed above with respect to the destruction of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians, and the destruction or wilful damage to institutions dedicated to religion. The Trial Chamber observes that both the Defence and the Prosecution made extensive submissions, which raise issues that the Trial Chamber will duly consider at the final judgement phase of this trial.

51. The above finding of “no case to answer” in those parts of paragraphs 13(f), 14(e) and 15(f) and the whole of paragraphs 13(g), 14(f) and 15(g) does not affect the integrity of persecution as a crime against humanity under Count 1 of the Indictment, as the rest of the factual allegations still stand.

VI. DISPOSITION

FOR THE FOREGOING REASONS

PURSUANT TO Rule 98 *bis* of the Rules,

The Trial Chamber:

1. **CONFIRMS** its Oral Decision of 9 October 2002 and **ENTERS** a judgement of acquittal on:
 - (i) the aspect of “destruction” of the property of Bosnian Croats, Bosnian Muslims and other non-Serb civilians including dwellings, businesses, personal property and livestock as contained in paras 13(f), 14(e) and 15(f) of the Indictment; and on
 - (ii) the whole offence of destruction or wilful damage to institutions dedicated to religion as contained in paras 13(g), 14(f) and 15(g) of the Indictment; and
2. **DISMISSES** the rest of the Motions for acquittal of Blagoje Simić, Miroslav Tadić and Simo Zarić.

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

Dated this eleventh day of October 2002,
At The Hague,
The Netherlands



Florence Ndepele Mwachande Mumba
Presiding

[Seal of the Tribunal]