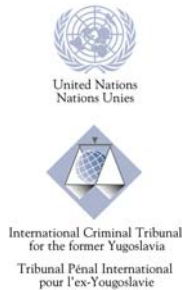
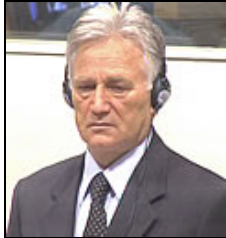


CASE INFORMATION SHEET



(IT-04-81)
**MOMČILO
PERIŠIĆ**

**MOMČILO PERIŠIĆ***Found not guilty*

From about 26 August 1993 until 24 November 1998, chief of the General Staff of the Yugoslav Army (VJ)

- Acquitted

| | |
|----------------------------------|--|
| Born | 22 May 1944 in Koštunići, Serbia |
| Indictment | Initial, 24 February 2005, made public on 7 March 2005; amended: 29 August 2005; revised second amended: 17 January 2008 |
| Surrendered | 7 March 2005 |
| Transferred to ICTY | 7 March 2005 |
| Initial appearance | 9 March 2005, pleaded not guilty to all charges |
| Trial Chamber judgement | 6 September 2011, sentenced to 27 years' imprisonment |
| Appeals Chamber judgement | 28 February 2013, acquitted |

STATISTICS

| | |
|--|-------------|
| Trial days | 198 |
| Witnesses called by Prosecution | 108 |
| Prosecution exhibits | 2945 |
| Witnesses called by Defence | 28 |
| Defence exhibits | 849 |
| Chamber exhibits | 3 |

| TRIAL | |
|------------------------------------|--|
| Commenced | 2 October 2008 |
| Closing arguments | 28-31 March 2011 |
| Trial Chamber I | Judge Bakone Justice Moloto (presiding), Judge Pedro David, Judge Michèle Picard |
| Counsel for the Prosecution | Mark Harmon, Daniel Saxon |
| Counsel for the Defence | Novak Lukić, Gregor Guy-Smith |
| Judgement | 6 September 2011 |

| APPEALS | |
|------------------------------------|---|
| Appeals Chamber | Judge Theodor Meron (presiding), Judge Carmel Agius, Judge Liu Daqun, Judge Andréia Vaz and Judge Arlette Ramarosan |
| Counsel for the Prosecution | Helen Brady |
| Counsel for the Defence | Novak Lukić, Gregor Guy-Smith |
| Judgement | 28 February 2013 |

| RELATED CASES <i>by geographical area</i> |
|---|
| BLAGOJEVIĆ & JOKIĆ (IT-02-60) "SREBRENICA" |
| ERDEMOVIĆ (IT-96-22) "PILICA FARM" |
| KARADŽIĆ (IT-95-5/18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA" |
| KRSTIĆ (IT-98-33) "SREBRENICA-DRINA CORPS" |
| MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA AND BOSNIA" |
| MLADIĆ (IT-09-92) "BOSNIA AND HERZEGOVINA" & "SREBRENICA" |
| NIKOLIĆ MOMIR (IT-02-60/1) "SREBRENICA" |
| OBRENOVIĆ (IT-02-60/2) "SREBRENICA" |
| ORIĆ (IT-03-68) |
| POPOVIĆ <i>et al.</i> (IT-05-88) "SREBRENICA" |
| STANIŠIĆ & SIMATOVIĆ (IT-03-69) |
| TOLIMIR (IT-05-88/2) "SREBRENICA" |
| TRBIĆ (IT-05-88/1) "SREBRENICA" |

INDICTMENT AND CHARGES

The initial indictment against Perišić was confirmed 24 February 2005, and made public on 7 March 2005.

The Prosecution filed an amended indictment on 26 September 2005. On 20 November 2006, the Trial Chamber invited the Prosecution, pursuant to Rule 73*bis*, to reduce the scope of the indictment by at least one-third. On 4 December 2006, the Prosecution declined to accept the invitation and indicated its preference to further amend the indictment. On 15 May 2007, the Trial Chamber ordered the Prosecution to file a new indictment containing all the amendments proposed by the Prosecution, and ordered them not to lead evidence on terror in relation to the Sarajevo counts, pursuant to Rule 73*bis*. The Prosecution filed the second amended indictment on 13 September 2007. On 17 January 2008, the Trial Chamber ordered the Prosecution to file a revised indictment. Subsequently, on 5 February 2008, the Prosecution filed the revised second amended indictment, which became the operative indictment in this case.

The indictment stated that Perišić was the chief of the General Staff of the Yugoslav Army (VJ) from about 26 August 1993 until 24 November 1998. According to the indictment, Perišić, as the most senior officer in the VJ, had *de jure* and *de facto* authority to:

- make and implement decisions for the VJ General Staff and all subordinate units;
- issue orders, instructions and directives, and ensure their implementation; and
- transfer and second VJ personnel to the Army of Republika Srpska (VRS) and the Army of Serbian Krajina (SVK) via the 30th and 40th Personnel Centres of the VJ General Staff for short temporary assignments or longer indefinite periods.

The accused was charged on basis of individual criminal responsibility for aiding and abetting in the planning, preparation, or execution of murder, inhumane acts, persecutions on political, racial or religious grounds, extermination, and attacks on civilians. He was also charged, in his capacity as a superior officer, for failing to take necessary and reasonable measures to prevent or punish the commission crimes by his subordinates.

Perišić was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) and on the basis of superior criminal responsibility (Article 7(3) of the Statute) with:

- **Murder; inhumane acts; persecutions on political, racial or religious grounds; extermination** (crimes against humanity, Article 5)
- **Murder; attacks on civilians** (violations of laws or customs of war, Article 3).

THE TRIAL

The trial commenced on 2 October 2008. The Prosecution rested its case on 25 January 2010.

The Defence case commenced on 22 February 2010 and was rested on 11 January 2011.

The closing arguments were heard from 28 until 31 March 2011.

TRIAL CHAMBER JUDGEMENT

The Trial Chamber found that, from September 1992 to November 1995, the VRS conducted a lengthy campaign of shelling and sniping in Sarajevo which resulted in the deaths of hundreds of civilians and the wounding of thousands of others. In the summer of 1995, the VRS invaded the town of Srebrenica, which the United Nations Security Council had previously established as a safe area for civilians. After taking over Srebrenica, the VRS proceeded to forcibly remove and massacre thousands of Muslim civilians and persons not taking an active part in hostilities.

The Trial Chamber determined that the SVK fired rockets on the city of Zagreb on 2 May 1995, killing 5 people and injuring 146. The SVK again fired rockets on Zagreb on the next day, killing two persons and injuring 54. The Chamber found that the SVK perpetrated the crimes of murder as a crime against humanity, murder as a war crime, inhumane Acts as a crime against humanity, and attacks on civilians as a war crime.

The Trial Chamber found that Perišić oversaw the Yugoslav Army's provision of extensive logistic assistance to the VRS and the SVK. Logistic assistance notably included vast quantities of infantry and artillery ammunition, fuel, spare parts, training and technical assistance.

The Supreme Defence Council of the Federal Republic of Yugoslavia granted Perišić and the Yugoslav Army the authority to provide logistic assistance to the VRS and SVK. Even though Perišić was not officially a member of the Supreme Defence Council, he participated in the Council's meetings, along with its members, notably Slobodan Milošević and Zoran Lilić, who at that time held the titles of President of Serbia and President of the Federal Republic of Yugoslavia, respectively. Perišić regularly urged the Council to continue providing logistic assistance to the VRS and SVK, insisting that they could not wage war without significant military support.

A large number of VRS and SVK officers were drawn from the ranks of the Yugoslav Army. They officially remained members of the Yugoslav Army even as they were fighting in Bosnia and Croatia under the banners of the VRS and SVK. Perišić proposed and carefully implemented the idea of creating "Personnel Centres" to regularise the status of these officers and allow them to lawfully remain part of the Yugoslav Army. VRS officers retained their salaries and benefits as Yugoslav Army members through what was known as the 30th Personnel Centre, and SVK officers through the 40th Personnel Centre. Perišić was well aware that the payment of salaries was, in his own words, of "great help" to the VRS.

Finally, the Chamber found that Perišić knew that the VRS's operations encompassed grave crimes against civilians. Perišić received information from a variety of sources concerning the VRS's criminal behaviour and discriminatory intent against Muslims. Under Perišić's direction, the Yugoslav Army's intelligence and security organs monitored the views of the international community and international media concerning the conflict in Bosnia and Herzegovina. The Yugoslav Army General Staff also received diplomatic reports about proceedings at the United Nations Security Council concerning grave abuses against civilians in Sarajevo and other parts of Bosnia and Herzegovina. In particular, Perišić was alerted to the fact that the VRS was conducting a campaign of sniping and shelling against civilians during its siege of Sarajevo. These regular attacks were well documented and widely reported for a period of three years. Perišić could not have reasonably discounted this information simply because he and his allies considered it biased against the Serbs. The fact that information was, in some instances, biased or one-sided does not undermine the finding that Perišić had notice of the VRS's crimes in Sarajevo, namely murder, attacks on civilians and inhumane acts.

With regard to the atrocities perpetrated during the takeover of Srebrenica in July 1995, the Chamber underlined that Perišić had already been notified long before this tragedy that the VRS had a propensity to target civilians. Further, he was aware of the escalating tensions in the Srebrenica area and that the VRS was preparing a military attack there. The Chamber was satisfied that Perišić knew that it was highly probable that the VRS would forcibly transfer Bosnian Muslims and commit killings and other abuses with discriminatory intent once Srebrenica had fallen under VRS control. In other words, Perišić knew of the likelihood that the VRS would perpetrate the crimes of murder, inhumane acts and persecution in Srebrenica. However, the Trial Chamber unanimously found that the evidence did not establish beyond a reasonable doubt that Perišić could reasonably have foreseen, based on his knowledge of the VRS's prior conduct, that the VRS would engage in the radical, systematic extermination of thousands of Muslims in Srebrenica. The evidence did not establish beyond a reasonable doubt that a superior-subordinate relationship existed at the relevant time between Perišić and perpetrators of the crimes committed in Sarajevo and Srebrenica. Accordingly, the Trial Chamber held that Perišić was not criminally responsible for failing to prevent the VRS's crimes or punish their perpetrators.

The Trial Chamber found that Perišić exercised effective control over Yugoslav Army officers serving in the SVK through the 40th Personnel Centre. This conclusion was further based on the finding that Perišić had the ability to issue command orders to senior SVK officers serving in the 40th Personnel Centre, who considered them binding. The Chamber therefore found that a superior-subordinate relationship existed at the relevant time between Perišić and perpetrators of the criminal attacks on Zagreb on 2 and 3 May 1995. The Chamber found that, although Perišić was immediately notified of both of the SVK's rocket attacks on Zagreb, he failed to take "necessary and reasonable measures" to punish the perpetrators, whose grave crimes were left unsanctioned. The Chamber thus held that Perišić was culpable of failing to punish his subordinates for their crimes in Zagreb.

On 6 September 2011, the Chamber rendered its judgement convicting Perišić, as an aider and abettor, on the basis of individual criminal responsibility (Article 7 (1) of the Statute of the Tribunal), of:

- Murder (crimes against humanity, Article 5) in relation to Sarajevo and Srebrenica;
- Murder (violation of the laws or customs of war, Article 3) in relation to Sarajevo and Srebrenica;
- Inhumane acts/injuring and wounding civilians (crimes against humanity, Article 5) in relation to Sarajevo;
- Attacks on civilians (violation of the laws or customs of war, Article 3) in relation to Sarajevo;
- Inhumane acts/inflicting serious injuries, wounding and forcible transfer (crimes against humanity, Article 5) in relation to Srebrenica
- Persecutions on political, racial or religious grounds (crimes against humanity, Article 5) in relation to Srebrenica

Furthermore, the Chamber convicted Perišić, on the basis of superior criminal responsibility (Article 7 (3) of the Statute of the Tribunal) of:

- Murder (crimes against humanity, Article 5) in relation to Zagreb;
- Murder (violation of the laws or customs of war, Article 3) in relation to Zagreb;
- Inhumane acts/injuring and wounding civilians (crimes against humanity, Article 5) in relation to Zagreb;
- Attacks on civilians (violation of the laws or customs of war, Article 3) in relation to Zagreb;

Perišić was found not guilty and acquitted of one count of extermination in relation to Srebrenica and as a superior for failing to prevent crimes by subordinates or punish their perpetrators in relation to Sarajevo and Srebrenica.

Sentence: 27 years' imprisonment

APPEALS PROCEEDINGS

On 8 November 2011, Perišić's Defence filed its notice of appeal. On 10 April 2012, the Defence filed its appeal brief (public redacted version). The appeal hearing took place on 30 October 2012.

APPEALS CHAMBER JUDGEMENT

Perišić submitted seventeen grounds of appeal challenging his convictions and his sentence. He requested that the Appeals Chamber reverse all of his convictions, or, in the alternative, that his sentence be reduced.

The Appeals Chamber recalled that the Trial Chamber concluded that specific direction was not an element of the *actus reus* of aiding and abetting. The Trial Chamber, accordingly, declined to consider whether Perišić specifically directed aid towards charged crimes by the Army of Republika Srpska (VRS). The Trial Chamber found that Perišić made a substantial contribution to these crimes, knew that his aid assisted the crimes in Sarajevo and Srebrenica, and was aware of the general nature of the crimes. Based on these findings, the Trial Chamber found him guilty of aiding and abetting VRS crimes in Sarajevo and Srebrenica. The Appeals Chamber, Judge Liu dissenting, considered that specific direction remained an element of aiding and abetting liability, and reaffirmed that no conviction for aiding and abetting a crime might be entered if specific direction had not been proved. The Appeals Chamber, Judge Liu dissenting, therefore considered that the Trial Chamber committed an error of law by not considering whether specific direction was proved in this case. The Appeals Chamber thus proceeded to assess the evidence relating to Perišić's convictions for aiding and abetting *de novo* under the correct legal standard, considering whether his actions were specifically directed to aid and abet the VRS Crimes in Sarajevo and Srebrenica.

The Trial Chamber did not find that all VRS activities in Sarajevo or Srebrenica were criminal in nature, and limited its findings to characterising as criminal certain *actions* of the VRS in the context of the operations in Sarajevo and Srebrenica. In these circumstances, the Appeals Chamber considered that a policy of providing assistance to the VRS's general war effort did not, in itself, demonstrate that aid facilitated by Perišić was specifically directed aid to the VRS crimes in Sarajevo and Srebrenica.

The Appeals Chamber considered that assistance from one army to another army's war efforts was insufficient, in itself, to trigger individual criminal liability for individual aid providers absent proof that the relevant assistance was specifically directed towards criminal activities. The Chamber underscored, however, that this conclusion should in no way be interpreted as enabling military leaders to deflect criminal liability by subcontracting the commission of criminal acts. If an ostensibly independent military group was proved to be under the control of officers in another military group, the latter could still be held responsible for crimes committed by their puppet forces. Similarly, aid from one military force specifically directed towards crimes committed by another force could also trigger aiding and abetting liability. However, as explained above, a sufficient link between the acts of an individual accused of aiding and abetting a crime and the crime he or she was charged with assisting must be established for the accused individual to incur criminal liability. Neither the findings of the Trial Chamber nor the evidence on the record in this case proved such a link with respect to Perišić's actions.

For the foregoing reasons, the Appeals Chamber, Judge Liu dissenting, granted Perišić's second and third grounds of appeal in part, insofar as they related to his convictions for aiding and abetting, and reversed his convictions under Counts 1, 2, 3, 4, 9, 10, 11, and 12 of the indictment. In view of this finding, Perišić's remaining arguments in his first through twelfth grounds of appeal were dismissed as moot.

Perišić, in his thirteenth ground of appeal, submitted that the Trial Chamber erred in law and in fact in determining that he was in a superior-subordinate relationship with the members of the Yugoslav Army (VJ) seconded to the Army of the Serbian Krajina (SVK) at the time of the shelling of Zagreb on 2 and 3 May 1995. The Appeals Chamber considered evidence regarding Perišić's ability to issue binding command orders to VJ personnel seconded through a unit of the VJ named the "40th PC". Having carefully

considered relevant circumstantial evidence, the Appeals Chamber was not convinced that the only reasonable conclusion was that Perišić could issue command orders to seconded VJ soldiers at the time of the shelling of Zagreb.

Furthermore, the Appeals Chamber noted evidence that SVK forces came under direct VJ control after the fall of the Republic of Serbian Krajina. In these circumstances, a reasonable interpretation of this evidence was that Perišić only acquired disciplinary powers over VJ members seconded to the SVK after the shelling of Zagreb. The Appeals Chamber concluded that, while some evidence on the record was consistent with Perišić possessing effective control over soldiers seconded through the 40th PC, other evidence on the record suggested that during the shelling of Zagreb, Perišić did not possess effective control over members of the perpetrators of charged crimes in Zagreb.

For the foregoing reasons, the Appeals Chamber found that the Trial Chamber erred in convicting Perišić for failing to punish VJ soldiers seconded through the 40th PC for crimes that took place during the shelling of Zagreb on 2 and 3 May 1995. Accordingly, Perišić's thirteenth ground of appeal was granted. Perišić's remaining submissions regarding superior responsibility were therefore rendered moot and did not need to be addressed.

On 28 February 2013, the Appeals Chamber reversed Perišić's convictions for crimes against humanity and violations of the laws or customs of war and entered a verdict of acquittal.

Judges Theodor Meron and Carmel Agius appended a joint separate opinion. Judge Arlette Ramaroson appended a separate opinion. Judge Liu Daqun appended a partially dissenting opinion.