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## Momčilo Perišić acquitted at the International Criminal Tribunal for the Former Yugoslavia

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### Fokus

After having been sentenced to 27 years of imprisonment in September 2011, the Appeals Chamber reversed the sentence in February 2013 and acquitted Momčilo Perišić of all counts. The accused was able to leave the United Nations Detention Unit after eight years.

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On 28 February 2013, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) acquitted Momčilo Perišić of all counts and reversed the previously passed sentence of 27 years.

Perišić was the chief of the General Staff of the Yugoslav Army between 26 August 1993 and 24 November 1998 and was considered the most senior officer in the Yugoslav Army. In this respect, he was charged on the basis of individual criminal responsibility, Art. 7 (1) of the ICTY Statute, and on the basis of superior criminal responsibility, enshrined in Art. 7 (3). The charges included crimes against humanity, such as murder, inhumane acts, persecutions on political, racial or religious grounds and exterminations (Art. 5), as well as violations of the customs of war, notably murder and attacks on civilians (Art. 3).

The **indictment** was initially issued under seal on 24 February 2005 and most recently amended in January 2008. Following his indictment, Perišić surrendered to the ICTY and was transferred to The Hague on 7 March 2005, where he pleaded not guilty to all charges during his initial appearance on 9 March 2005. The trial commenced on 2 October 2008, with closing arguments having taken place from 28 until 31 March 2011.

After 198 trial days, 108 witnesses called by the Prosecution and 28 witnesses called by the Defence, the Trial Chamber, composed of Judges Bakone Justice Moloto (presiding), Pedro David and Michèle Picard, rendered its **judgment** on 6 September 2011. It convicted the accused on the basis of Art. 7 (1) of the Statute as an aider and abettor and on the basis of Art. 7 (3) under the mode of superior criminal responsibility, Judge Moloto dissenting. Perišić was found guilty for aiding and abetting a military campaign of crimes committed in Srebrenica and Sarajevo between August 1993 and November 1995 and as a superior, for failing to punish subordinates for the shelling of civilian areas in Zagreb on 2 and 3 May 1995. He was sentenced to 27 years of imprisonment.

Two months after the judgment, the Defence filed its notice of appeal and subsequently its appeal brief on 10 April 2012, including 17 grounds of appeal and requesting the Appeals Chamber to reverse all convictions, or in the alternative to reduce the sentence passed. The appeals hearing took place on 30 October 2012, with the **appeals judgment** having been recently rendered on 28 February 2013.

The Appeals Chamber, composed of Judges Theodor Meron (presiding), Carmel Agius, Liu Daqun, Arlette Ramarosan and Andrésia Vaz, reversed, by majority, Perišić's previous convictions, with Judge Liu partially dissenting. It found that the evidence on the record in this case did not prove beyond reasonable doubt that the accused 'specifically directed' assistance towards crimes committed in Sarajevo and Srebrenica. The Appeals Chamber also found that the Trial Chamber had committed an error of law, by holding that 'specific direction' is not an element of the liability of aiding and abetting.

Furthermore, the Appeals Chamber unanimously found that the Trial Chamber had committed an error of law by failing to address evidence with regard to the accused's 'effective control' over soldiers of the Serbian Army of Krajina committing crimes during the shelling of Zagreb. The Chamber found that the evidence on the record further did not prove beyond reasonable doubt that Perišić possessed such 'effective control'. The Appeals Chamber noted that the accused had instructed a stop to the shelling of Zagreb, but that his instructions were not followed and that there was no clear evidence on whether the accused was able to issue orders or discipline the soldiers of the Serbian Army of Krajina at that time.

Absent a finding of 'specific direction' and 'effective control', the Appeals Chamber concluded that Perišić could neither be held liable as an aider and abettor nor as a superior. The Appeals Chamber therefore ordered the immediate release of Momčilo Perišić.

### Verantwortung

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