



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-98-34-T
Date: 28 June 2002
Original: English

BEFORE TRIAL CHAMBER I SECTION A

Before: Judge Liu Daqun, Presiding
Judge Maureen Harding Clark
Judge Fatoumata Diarra

Registrar: Mr. Hans Holthuis

Decision of: 28 June 2002

PROSECUTOR

v.

**MLADEN NALETILIĆ aka "TUTA"
and
VINKO MARTINOVIĆ aka "ŠTELA"**

**DECISION ON THE ADMISSION OF EXHIBITS
TENDERED THROUGH WITNESSES NE AND NH**

The Office of the Prosecutor:

Mr. Kenneth Scott

Counsel for the Accused:

**Mr. Krešimir Krsnik, for Mladen Naletilić
Mr. Branko Šerić, for Vinko Martinović**

TRIAL CHAMBER I, SECTION A (“the 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 (“the Tribunal”),

BEING SEISED OF the following submissions:

- 1) “Accused Naletilić’s Documents Tendered Through Witness ‘NE’”, filed on 30 May 2002;
- 2) “Prosecution’s Submission of Cross-Examination Exhibits Concerning Witness NE”, filed confidentially on 3 June 2002;
- 3) “Prosecution’s Objection to Defence Exhibits Tendered Through Witness NE”, filed on 3 June 2002;
- 4) “Accused Naletilić’s Objections to Documents Tendered Through Cross of Witness ‘NE’”, filed on 6 June 2002 (“the Objection”);
- 5) “Prosecutor’s Submission of Cross-examination Exhibits Concerning Witness NH”, filed confidentially on 4 June 2002;
- 6) “Accused Naletilić’s Objections to Documents Tendered Through Cross of Witness ‘NH’”, filed on 6 June 2002;

NOTING that the parties put forward, where appropriate, the lists of the exhibits submitted through the testimony of Witnesses NE and NH that they seek to have admitted, as well as their objections to the said exhibits;

NOTING that in the Objection, the Naletilić Defence “lodges a continuing objection to all documents tendered by the prosecution whose source is ‘BiH Govt’, until such time as the Prosecution informs the Defence and the Trial Chamber [of] the actual source of the documents”;¹

CONSIDERING that, pursuant to Rule 89 (C) of the Rules of Procedure and Evidence (“the Rules”), “[a] Chamber may admit any relevant evidence which it deems to have probative value”;

CONSIDERING that the Appeals Chamber has held that “[t]here is no legal basis ... that proof of authenticity is a separate threshold requirement for the admissibility of documentary evidence”;²

¹ The Objection, at p. 2.

CONSIDERING, however, that in accordance with the jurisprudence of the Tribunal, it is required that the evidence presents “sufficient indicia of reliability”;³

CONSIDERING that the party conducting the direct examination of a witness must lay the source of the document it wishes to submit through the witness, in order for that document to meet the required degree of reliability;

CONSIDERING that the party conducting the cross-examination of a witness must lay the background and the source of the documents it wishes to submit through the witness, in order to allow the witness to recognise or reject the document;

CONSIDERING furthermore that the mere admission of a document does not necessarily mean that the document gives an accurate portrayal of the facts;⁴

RECALLING that the decision to authorise the admission of a document is without prejudice to the value or weight which will be accorded to the document at the final stage of the trial;

CONSIDERING that the Government of Bosnia and Herzegovina is the internationally recognised Government of a member State of the United Nations; that it is accepted that material provided by a government satisfies the source requirement set out by the Chamber;

CONSIDERING that on 19 June 2002, the Chamber asked the parties to file their written submissions relating to Exhibit P928;⁵

CONSIDERING that Exhibits D1/344, D1/345 and D1/43.1 were already admitted by an oral decision of the Chamber on 30 May 2002;⁶

CONSIDERING FURTHER that Exhibits P301.1, P665 and P680 were already admitted by a Decision of the Chamber dated 31 January 2002;⁷ that Exhibit P578 was also admitted in another Decision issued by the Chamber on the same date;⁸

² *Prosecutor v. Delalić et al.*, “Decision on Application of Defendant Zejnil Delalić for Leave to Appeal against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence”, Case No. IT-96-21-AR73.2, 4 March 1998, at para. 25.

³ *Ibid.*, at para. 17; See also, *Prosecutor v. Aleksovski*, Decision on Prosecutor’s Appeal on Admissibility of Evidence, Case No. IT-95-14/1-A, 16 February 1999; *Prosecutor v. Kordić and Čerkez*, Decision on Appeal Regarding Statement of a Deceased Witness, Case No. IT-95-14/2-A, 21 July 2000; *Prosecutor v. Brđanin and Talić*, Order on the Standards Governing the Admission of Evidence, Case No. IT-99-36-T, 15 February 2002, at para. 18;

⁴ *Ibid.*

⁵ T. 12731.

⁶ T. 12067.

⁷ *Prosecutor v. Martinović and Naletilić*, Third Decision on Admission of Exhibits, Case No. IT-98-34-T, 31 January 2002.

⁸ *Prosecutor v. Martinović and Naletilić*, Decision on Admission of Seized Documents, Case No. IT-98-34-T, 31 January 2002.

CONSIDERING that Exhibit P160.1 has not been discussed at any stage of the proceedings;

FOR THE FOREGOING REASONS,

PURSUANT to Rules 54 and 89 of the Rules,

HEREBY ORDERS, in respect to the exhibits submitted in the course of the testimony of Witnesses NE and NH:

1. that the following Defence exhibits are admitted:

D1/333; D1/334*; D1/335*; D1/336; D1/337; D1/338; D1/339; D1/340; D1/341;

2. that the following Prosecution exhibits are admitted:

P929; P124.2; P296.1; P82.1; P157.12; P138.1; P162.3; P198.3; P271.1;

DENIES the admission of the following exhibit:

P160.1;

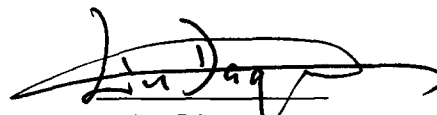
ORDERS the parties to file their written submissions regarding Exhibit P928 within seven (7) days of this Decision and **RESERVES** its decision with regard to Exhibits P928 and P928/1 pending such filing;

REMINDS the Parties that the documents indicated by (*) are confidential.

REMINDS the parties that any objection to the list of exhibits submitted by the other party must be filed within seven (7) days of the date of the filing of the said list.

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

Dated this twenty-eighth of June 2002,
At The Hague,
The Netherlands



Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]