



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: 25 July 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: 25 July 2002

PROSECUTOR

v.

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

**DECISION ON THE ADMISSION OF EXHIBITS
TENDERED THROUGH IVAN BAGARIĆ**

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 For Admission Through Dr. Ivan Bagarić”, filed on 19 June 2002;
- 2) “Prosecutor’s Submission of Cross-examination Exhibits Concerning Expert Witness Stiepo Andrijić and Ivan Bagarić”, filed on 21 June 2002;
- 3) “Prosecutor’s Objections to Defence Exhibits Tendered Through Witness Ivan Bagarić”, filed on 25 June 2002 (“the Prosecutor’s Objection”);
- 4) “Accuseds Naletilić’s Objections to Documents Tendered Through the Cross-examination of Dr. Bagarić”, filed on 27 June 2002 (“the Defence Objection”);

NOTING that the parties put forward the lists of the exhibits submitted through the testimony of Ivan Bagarić that they seek to have admitted, as well as their objections to the said exhibits;

NOTING that the Prosecution objects to the admission of certain Defence exhibits on the basis that they were “submitted only for purposes of *tu quoque*”;¹

NOTING that the Defence objects to “any and all documents concerning detention centers or prisons [on the ground that] the Accused Naletilić is not charged in the Indictment with setting these camps up or with running these camps in any manner”;²

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”;³

¹ The Prosecutor’s Objection, p. 2.

² The Defence Objection, at para. 5.

³ *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.

CONSIDERING, however, that in accordance with the jurisprudence of the Tribunal, it is required that the evidence presents “sufficient indicia of reliability”;⁴

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;⁵

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 accused Naletilić is charged with crimes directly related to the operation of detention centers set up in the area covered by the indictment; that evidence on this matter is therefore relevant to the present case;

CONSIDERING FURTHER that it is the view of the Chamber that exhibits submitted to the *sole* purpose of establishing a *tu quoque* defence are not relevant to the present proceedings and as such, should not be admitted;

NOTING that the Prosecution did not tender Exhibit P716.1 into evidence;

NOTING FURTHER that the Naletilić Defence did not tender Exhibit D1/357 into evidence;

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 Ivan Bagarić, that the following exhibits are admitted:

⁴ *Ibid.*, at para. 17; See also, *Prosecutor v. Aleksovki*, 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.

⁵ *Ibid.*

D1/347; D1/348; D1/349; D1/350; D1/351; D1/352; D1/353; D1/354; D1/355; D1/356; D1/358;
D1/359; D1/362; D1/367; D1/368; D1/370; D1/371; D1/372; D1/373; D1/375; D1/376; D1/377;
D1/378; D1/380; D1/381; D1/383; D1/388;

P171.1; P239.11; P566.4; P578.11; P578.12; P601.2; P612.2; P614.1; P618.1; P630.2; P638.1;
P661.11; P697.1;

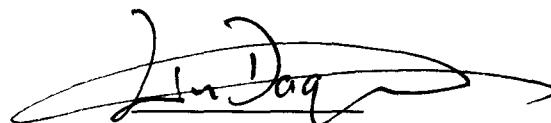
DENIES the admission of the following exhibits:

D1/379; D1/382; D1/386;

REMINDS the parties that, unless otherwise ordered, 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-fifth day of July 2002,
At The Hague,
The Netherlands



Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]