



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: 31 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: 31 July 2002

PROSECUTOR

v.

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

**DECISION ON THE ADMISSION OF EXHIBITS TENDERED
THROUGH WITNESSES NN AND STIEPO ANDRIJIĆ**

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) “Prosecutor’s Submission of Cross-examination Exhibits Concerning Expert Witness Stiepo Andrijić and Ivan Bagarić”, filed on 21 June 2002;
- 2) “Prosecutor’s Submission of Cross-examination Exhibits Concerning Witness NN”, filed confidentially on 26 June 2002 (“the Prosecution filing”);
- 3) “Accused Naletilić’s Objections to Documents Tendered Through Cross-examination of ‘NN’”, filed on 28 June 2002;

NOTING that the Prosecution put forward the list of the exhibits submitted through the testimony of Stiepo Andrijić and Witness NN that it seeks to have admitted; that concerning Witness NN, the Naletilić Defence tendered Exhibits D1/392; D1/393; D1/394; D1/395; D1/396 and D1/397 orally on 25 June 2002 and that the Prosecution orally objected to the said exhibits on the same date;

NOTING that the Naletilić Defence filed its objections to the exhibits submitted by the Prosecution during the testimony of Witness NN, but did not file any objection to the exhibits used during the testimony of Stiepo Andrijić within the prescribed deadline;

CONSIDERING that in principle, exhibits should be submitted through a witness;

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”;¹

CONSIDERING, however, that in accordance with the jurisprudence of the Tribunal, it is required that the evidence presents “sufficient indicia of reliability”;²

¹ *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.

² *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

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;³

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;

NOTING that Exhibit D1/100 was admitted in court on 25 June 2002; that Exhibits P2; P183; P325*; P333; P333.1; P360; P362; P368 and P906 were all previously admitted;

NOTING that Exhibit P932 does not require a translation into BCS as it does not directly relate to the charges against the accused;⁴

NOTING that the Chamber orally requested the Prosecution to provide further information on the provenance of Exhibits P318.1 and P318.2*;⁵ that such information was not provided in the Prosecution filing;

NOTING that the Naletilić Defence did not seek the admission into evidence of Exhibit D1/389;

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 testimonies of Stjepo Andrijić and Witness NN, that the following exhibits are admitted:

D1/392; D1/393; D1/394; D1/396; D1/397;

P136.2; P136.3; P155.1; P157.4; P932; P933;

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.

³ *Ibid.*

⁴ See *Prosecutor v. Martinović and Naletilić*, Decision on Defence's Motion Concerning Translation of All Documents, Case No. IT-98-34-T, 18 October 2001, as clarified by an oral order of the Trial Chamber dated 12 November 2001.

⁵ T. 12924.

DENIES the admission into evidence of the following exhibits:

D1/395; P318.1; P318.2*;

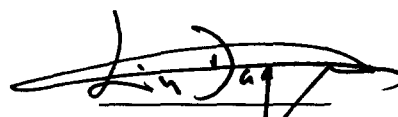
RESERVES its decision on Exhibit P928/3;

REMINDS the parties that the exhibits marked (*) are confidential;

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 thirty first day of July 2002,
At The Hague,
The Netherlands



Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]