



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No.: IT-02-60/1-A  
Date: 30 September 2004  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Fausto Pocar  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Hans Holthuis

**Decision:** 30 September 2004

**Momir NIKOLIĆ**

v.

**PROSECUTOR**

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**DECISION ON MOTION FOR JUDICIAL NOTICE**

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**Counsel for the Appellant:**

**Mr. Veselin Londrović  
Ms. Virginia C. Lindsay**

**Counsel for the Prosecutor:**

**Mr. Norman Farrell**

**THE APPEALS 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 (“International Tribunal”);

**BEING SEISED** of the “Motion for Judicial Notice” filed by Momir Nikolić (“Appellant”) on 20 August 2004 (“Motion”), whereby, pursuant to Rule 94 and Rule 107 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), the Appellant:

- (1) requests the Appeals Chamber to take judicial notice of two reports by Richard Butler filed by the Prosecution before the *Blagojević and Jokić* Trial Chamber and the *Krstić* Trial Chamber, namely the “VRS Brigade Command Responsibility Report” dated 31 October 2002<sup>1</sup> and the “VRS Corps Command Responsibility Report” dated 5 April 2000<sup>2</sup> (“Expert Reports”);<sup>3</sup>
- (2) “submits three newspapers articles”<sup>4</sup> relating to mass graves exhumed near the village of Bljeceva and a report by the Institute for War and Peace Reporting summarising media reports in Bosnia and Herzegovina and Republika Srpska in June 2004 (“Newspapers reports”);
- (3) requests the Appeals Chamber “to take judicial notice that only ten months after [the Appellant] testified in the *Blagojević and Jokić* trial proceedings, the Republika Srpska has now admitted that the Republika Srpska army committed terrible atrocities against Bosniac civilians and captured soldiers and that the bodies of the victims were buried in 32 mass graves” (“*Republika Srpska* Statement”);<sup>5</sup>

**NOTING** the “Corrected Appendices to Appellant’s Motion for Judicial Notice” filed on 24 August 2004;

**NOTING** the “Prosecution Response to Motion for Judicial Notice” filed on 30 August 2004 (“Response”), in which the Prosecution submits that the Motion should be dismissed on the grounds, *inter alia*, that:

- (1) the Motion is confusing and unclear as to which documents are sought to be admitted and the basis upon which judicial notice is sought;

<sup>1</sup> *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Exhibit P357.

<sup>2</sup> *Prosecutor v. Krstić*, IT-98-33-T, Exhibit P-401.

<sup>3</sup> Motion, para. 3.

<sup>4</sup> Motion, para. 4.

<sup>5</sup> Motion, para. 7.

- (2) though the Appellant seems to request the Appeals Chamber to take judicial notice only of the Expert Reports and of one fact, the *Republika Srpska* Statement,<sup>6</sup> the Appellant also puts forward three newspaper reports on which he appears to be relying as additional evidence for corroboration of his co-operation;
- (3) the Expert Reports and the *Republika Srpska* Statement do not satisfy the requirements of Rule 94(A) or 94(B) of the Rules;

**NOTING** the “Reply to the Prosecution Response to Appellant’s Motion for Judicial Notice” filed on 3 September 2004 (“Reply”), in which the Appellant replies that he seeks judicial notice under Rule 94(A) of the Rules of the following facts as matters of common knowledge:

- the “uncontested facts” contained in the VRS Brigade Command Responsibility Report;<sup>7</sup>
- “the fact that in June 2004, only ten months after Appellant testified in the *Blagojević and Jokić* trial proceedings, it was widely reported that the official Republika Srpska “Commission for Srebrenica for the first time has publicly revealed that the Republika Srpska’s army committed terrible atrocities against Bosniac civilians and captured soldiers and that the bodies of the victims were buried in 32 mass graves”;<sup>8</sup>
- the fact that a mass grave identified by Appellant near the village of Bljeceva is now being exhumed;<sup>9</sup>

and that, in addition, he seeks judicial notice pursuant to Rule 94(B) of the Rules for adjudicated facts contained in Section Three of the VRS Corps Command Responsibility Report;<sup>10</sup>

**CONSIDERING** that the Motion is unclear as to which facts or documents are sought to be judicially noticed;

**CONSIDERING** that, although Rule 94(A) and Rule 94(B) of the Rules provide two different standards of admissibility, the Appellant did not specify in the Motion whether the facts or documents, for which he wants to have judicial notice taken, are “facts of common knowledge” within the meaning of Rule 94(A) or “adjudicated facts or documentary evidence from other proceedings of the Tribunal” within the meaning of Rule 94(B);

**CONSIDERING** that, pursuant to paragraph 10(a) and (b) of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal of 7

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<sup>6</sup> Response, para. 4.

<sup>7</sup> Reply, para. 2.1.

<sup>8</sup> Reply, para. 2.2.

<sup>9</sup> Reply, para. 2.3.

<sup>10</sup> Reply, para. 3.

March 2002, a party wishing to move the Appeals Chamber for a specific ruling or relief shall file a Motion containing the precise ruling or relief sought and the specific provision of the Rules under which the ruling or relief is sought;

**CONSIDERING** that the Motion does not fulfil these requirements and that the clarifications submitted by the Appellant in his Reply were provided too late to cure the defects related to the vagueness of the Motion;

**CONSIDERING** that the opposing party has been, as a result, deprived of its right to respond with full knowledge, which harms the fairness of the proceedings;

**FOR THE FOREGOING REASONS,**

**DISMISSES** the Motion without prejudice to the Appellant's refiling a motion consistent with this decision.

Done in English and French, the English text being authoritative.

Done this 30 day of September 2004,  
At The Hague,  
The Netherlands



Judge Meron  
Presiding Judge

**Seal of the Tribunal**