



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-03-68-T
Date: 1 November 2004
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Hans Henrik Brydesholt
Judge Albin Eser

Registrar: Mr. Hans Holthuis

Decision of: 1 November 2004

PROSECUTOR

v.

NASER ORIĆ

**DECISION ON DEFENCE MOTION FOR THE TRIAL
CHAMBER TO TAKE JUDICIAL NOTICE OF ADJUDICATED
FACTS IN THE *DERONJIĆ* CASE**

The Office of the Prosecutor:

Mr. Jan Wubben

Counsel for the Accused:

Ms. Vasvija Vidović
Mr. John Jones

TRIAL CHAMBER II (“Trial 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 (“Tribunal”):

BEING SEISED OF the “Defence Motion for the Trial Chamber to take judicial notice of adjudicated facts in the *Deronjić* case” filed on 18 October 2004 (“Motion”), in which the Defence applies to the Trial Chamber pursuant to Rule 94(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) for judicial notice of the facts set out in the *Deronjić* Sentencing Judgement¹, the *Deronjić* Amended Indictment², the *Deronjić* Plea Agreement³ and the *Deronjić* Factual Basis⁴ (“*Deronjić* facts”),

NOTING that the Defence submits that taking judicial notice of the facts allegedly adjudicated in the *Deronjić* case would be in the interests of justice as it would contribute to an understanding of the places and events in Bratunac municipality in 1992 and to a fair and expeditious trial,

NOTING the “Prosecution’s Response to Defence Motion for the Trial Chamber to take judicial notice of adjudicated facts in the *Deronjić* case” filed on 28 October 2004 (“Response”), in which the Prosecution contests the Motion on the basis that the requirements necessary for the judicial notice of adjudicated facts pursuant to Rule 94(B) of the Rules have not been met,

NOTING indeed that Rule 94(B) provides that “[a]t the request of a party or *proprio motu*, a Trial Chamber after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings”,

NOTING further that other Trial Chambers of the Tribunal have established that, for a fact to be admitted pursuant to Rule 94(B), it should truly be adjudicated and neither based upon an agreement between parties to previous proceedings⁵, nor subject to reasonable dispute⁶,

¹ *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-S, Sentencing Judgement, 30 March 2004 (“*Deronjić* Sentencing Judgement”).

² *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-PT, Amended Indictment, 30 September 2003 (“*Deronjić* Amended Indictment”).

³ *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-T, Plea Agreement, 29 September 2003 (“*Deronjić* Plea Agreement”).

⁴ *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-PT, Factual Basis, 29 September 2003 (“*Deronjić* Factual Basis”).

⁵ *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts, 23 January 2003; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts Relevant to the Municipality of Brčko, 5 June 2002.

CONSIDERING that the *Deronjić* facts have not been truly adjudicated and are the subject of reasonable dispute,

HAVING DENIED the Motion orally on 29 October 2004,

FOR THE FOREGOING REASONS

PURSUANT TO Rule 94(B) of the Rules;

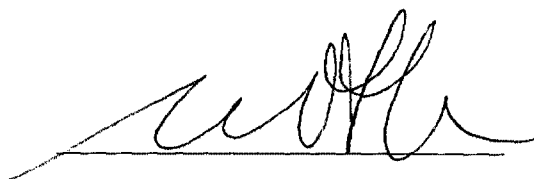
HEREBY CONFIRMS its oral ruling and **DENIES** the Motion.

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

Dated this first day of November 2004,

At The Hague,

The Netherlands.



Carmel Agius

Presiding Judge

[Seal of the Tribunal]

⁶ *Prosecutor v. Duško Sikirica, Damir Došen and Dragan Kolundžija*, Case No. IT-95-8-PT, Decision on Prosecution's motion for Judicial Notice of Adjudicated Facts, 27 September 2000.