



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-04-83-PT

Date: 18 October 2006

Original: ENGLISH

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**IN THE TRIAL CHAMBER**

**Before: Judge Krister Thelin, Pre-Trial Judge**

**Registrar: Mr. Hans Holthuis**

**Decision of: 18 October 2006**

**PROSECUTOR**

**v.**

**RASIM DELIĆ**

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**DECISION REGARDING THE PROSECUTION MOTION FOR JUDICIAL  
NOTICE OF ADJUDICATED FACTS**

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**Office of the Prosecutor**

**Mr. Daryl Mundis**

**Ms. Tecla Henry-Benjamin**

**Counsel for the Accused**

**Mrs. Vasvija Vidović**

**Ms. Quincy Whitaker**

**I, Krister Thelin**, Judge 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 “Prosecution Motion for Judicial Notice of Adjudicated Facts”, filed on 29 September 2006 (“Motion”), and “Corrigendum to the Prosecution Motion for Judicial Notice of Adjudicated Facts”, filed on 5 October 2006, in which the Prosecution, pursuant to Rule 94 (B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), “requests the Trial Chamber to take judicial notice of facts adjudicated in *The Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T (“*Hadžihasanović*”), namely those taken from the Trial Chamber Judgement dated 15 March 2006, listed in the Annex to this Motion” (“Annex”);<sup>1</sup>

**NOTING** the Prosecution submission that it proposes the facts listed in Annex in French because “no official English translation exists at the time of the filing of this Motion”;<sup>2</sup>

**NOTING** the Defence response to the Motion, filed on 6 October 2006 (“Response”), in which the Defence reserves its right to submit its substantive response to the Motion in due course, but firstly files its Response requesting either “(1) a stay of the Prosecution Motion until an English translation of the *Hadžihasanović* Judgement is available and so translations of the facts can be provided to the Defence as an addendum to the Motion; or (2) that the Prosecution be ordered to re-file the Motion with an English version of the adjudicated facts when an official translation becomes available”;<sup>3</sup>

**NOTING** that in support of its request the Defence argues, *inter alia*, that “under Rule 44 (A)(ii) the requirement is that Counsel ‘has written and oral proficiency in one of the two working languages of the Tribunal’” and that “[b]oth Counsel representing the Accused in this case have oral and written proficiency in English and are therefore unable to adequately understand the facts submitted by the Prosecution”;<sup>4</sup>

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<sup>1</sup> Motion, p. 1.

<sup>2</sup> Motion, p. 7; Corrigendum, p. 1.

<sup>3</sup> Response, Introduction, p. 1 and p. 3, para. 6.

<sup>4</sup> Response, para. 2.

**FURTHER NOTING** the Defence arguments that “[t]he facts submitted by the Prosecution are very important to the issues in the present case and it is vital that Defence has an official translation of these facts, into a language it understands before making any submissions on them” and that “[i]t is also vital that Defence has an official translation of judgement to examine wheather (*sic*) the proposed adjudicated facts are in the context of the original judgement” and that “it would be a violation of its professional obligation to the Accused to agree to a fact that it did not understand”,<sup>5</sup>

**NOTING** the Prosecution reply to the Response, filed on 11 October 2006 (“Reply”), in which the Prosecution indicates that it has no objection to a stay of the proceedings for the Defence to respond to the Motion until 14 days after the official translation of the Trial Chamber Judgement in *Hadžihasanović* has been made available to the parties;<sup>6</sup>

**CONSIDERING** that the Prosecution did not seek leave, as required by Rule 126 *bis* of the Rules, to reply to the Response, but the Trial Chamber is aided by consideration of all the arguments raised and information provided by the parties;

**NOTING** that following inquiries with respect of the expected date of the completion of translation, the Trial Chamber was informed by the Conference and Language Services Section, the body within the Registry responsible for the translation, that it aims to complete the English translation of the *Hadžihasanović* Trial Chamber Judgement by the end of November 2006;

**PURSUANT** to Rules 3, 44, 54, 126 *bis*, and 127 of the Rules,

**HEREBY ORDERS AS FOLLOWS:**

- (1.) The Prosecution is granted leave to file the Reply and the Trial Chamber accepts the Reply as filed;
- (2.) The Defence request for a stay of the Motion until the English translation of the Trial Chamber Judgement in *Hadžihasanović* is granted and the Prosecution shall re-


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<sup>5</sup> Response, para. 3.

file the Annex listing the proposed adjudicated facts in English within two days of the release of the official translation of the *Hadzihasanović* Trial Chamber Judgement;

(3.) The Defence shall respond to the Motion within fourteen days of the re-filing by the Prosecution of the Annex listing the proposed adjudicated facts in English.

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

  
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Krister Thelin  
Pre-Trial Judge

Dated this eighteenth day of October 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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<sup>6</sup> Reply, para. 2.