



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-08-91-T
Date: 12 October 2010
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 12 October 2010

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING IN PART PROSECUTION'S
MOTION SEEKING TO ADD WITNESSES TO ITS
RULE 65TER LIST OF WITNESSES AND TO EXPAND
THE TESTIMONY OF TWO OTHER WITNESSES IN
RESPONSE TO CHALLENGED ADJUDICATED FACTS**

The Office of the Prosecutor

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Counsel for the Accused

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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”) is seised of “Prosecution’s motion seeking to amend its Rule 65 *ter* list of witnesses in response to challenges to adjudicated facts”, filed confidentially on 8 July 2010 (“Motion”).¹

I. PROCEDURAL HISTORY

1. On 22 July 2010, the Defence for Stojan Župljanin filed a response (“Župljanin Response”) objecting to the Motion.² The Defence for Mićo Stanišić did not respond. On 27 July 2010 the Prosecution sought leave to file a reply and replied (“Reply”).³

2. On 21 July 2010, acting pursuant to the Trial Chamber’s 14 July 2010 “Decision granting in part the Prosecution’s motion to amend its Rule 65 *ter* witness list as a result of the Trial Chamber’s 1 April 2010 decision concerning judicial notice of adjudicated facts”, the Prosecution filed a notice adding ST17, ST26, ST240 and ST253 to the 65 *ter* list.⁴ Accordingly, the Trial Chamber interprets the portion of the Motion pertaining to ST17, ST26, ST240 and ST253 as a request to expand their testimony to address the adjudicated facts purportedly challenged by the Defence.⁵

3. On 11 October 2010, the Trial Chamber rendered an oral decision with regard to witness ST17.⁶

II. SUBMISSIONS

A. Motion

1. Addition of ST55 and ST41

3. The Prosecution seeks to add two witnesses, ST41 and ST55, to its Rule 65 *ter* list of witnesses in order to provide additional evidence in support of adjudicated facts challenged by the

¹ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Prosecution’s Motion seeking to amend its Rule 65 *ter* list of witnesses in response to challenges to adjudicated facts, filed confidentially on 8 July 2010.

² *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Župljanin response to Prosecution’s motion seeking leave to amend its Rule 65 *ter* list of witnesses in response to challenges to adjudicated facts, filed confidentially on 22 July 2010.

³ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Prosecution’s Motion for leave to reply and reply to Župljanin’s response to Prosecution’s motion seeking to amend its Rule 65 *ter* list of witnesses in response to challenges to adjudicated facts, filed confidentially on 26 July 2010.

⁴ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Prosecution’s notice pursuant to the Trial Chamber’s decision granting in part the Prosecution’s motion to amend its Rule 65 *ter* witness list, with confidential annexes, 21 July 2010, Annex A.

⁵ Motion, paras 16-23.

⁶ 11 October 2010, T. 66-67(livenote).

Defence through cross-examination.⁷ The Prosecution submits that it has good cause for seeking leave to amend its Rule 65 *ter* list.⁸ The Prosecution contends that while both the Stanišić and Župljanin Defence teams have stated that they challenge all adjudicated facts, specific challenges to adjudicated facts have only arisen during the course of cross-examination of witnesses.⁹ The Motion addresses those facts which have been specifically challenged.¹⁰

4. The Prosecution submits that ST55 can provide evidence addressing challenged adjudicated facts 519, 542 and 943.¹¹ Adjudicated fact 519 pertains to attacks against several non-Serb towns in Kotor Varoš.¹² Adjudicated facts 542 and 943 pertain to killings and looting in Dabovci in Kotor Varoš.¹³ According to the Prosecution, the three adjudicated facts were challenged during the cross-examination of ST167.¹⁴

5. The Prosecution recalls that ST55 was previously on its Rule 65 *ter* witness list¹⁵ and submits that it withdrew ST55 from the 65 *ter* list at the invitation of the Trial Chamber to reduce the scope of the Indictment and on the basis that ST55's evidence was largely covered by adjudicated facts.¹⁶ The Prosecution proposes that ST55 be heard pursuant to Rule 92 *bis*.¹⁷

6. The Prosecution asserts that witness ST41, who had been on its original 65 *ter* list, can provide evidence addressing challenged adjudicated fact 1268, pertaining to the imposition of a curfew on Muslims and Croats in the municipality of Dobož.¹⁸ Adjudicated fact 1268 was challenged during the cross-examination of ST216¹⁹ and ST162.²⁰ The Prosecution proposes that ST41 be heard pursuant to Rule 92 *bis*.²¹

⁷ Motion, paras 1, 2.

⁸ Motion, paras 5-26.

⁹ Motion, para. 7.

¹⁰ Motion, para. 8.

¹¹ Motion, para. 13.

¹² *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision granting in part Prosecution's motions for judicial notice of adjudicated facts pursuant to Rule 94(B), 1 April 2010, Annex A, p. 43 ("Adjudicated Facts Decision").

¹³ *Id.*, Annex A, p. 45 and p. 79.

¹⁴ ST167, 30 Jun 2010, T. 12457-12459, 30 Jun 2010, T.12461 and 30 Jun 2010, T.12456-12457.

¹⁵ Motion, para. 12.

¹⁶ Motion, para. 12. See also *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Prosecution's response to Trial Chamber's invitation to reduce the scope of its indictment, with confidential annexes, filed confidentially, 24 April 2008, Annex B, p.1.

¹⁷ Motion, para. 13.

¹⁸ Motion, para. 15.

¹⁹ ST216, 28 Apr 2010, T. 9366-9372.

²⁰ ST162, 11 May 2010, T. 9934-9943.

²¹ Motion, para. 15.

2. Expanding the scope of the testimony of ST17, ST26, ST240, ST253

7. Furthermore, the Prosecution submits that the proposed evidence of ST17, ST26, ST240 and ST253 can also address a number of challenged adjudicated facts.²² For example, ST17 can testify “on the facts which have been challenged by the Defence with regard to the killings at Velagići”²³ and ST253 can cover facts 1214 and 1215 in addition to fact 500-505 “to counter the Defence’s challenge to adjudicated facts relating to [...] Teslić.”²⁴

A. Župljanin Response

8. In its response, the Župljanin Defence opposes the Motion and requests that the Trial Chamber deny it.²⁵ The Župljanin Defence submits that the Prosecution seeks to expand the scope of its case.²⁶ The Župljanin Defence maintains that the witness summaries associated with the two proposed witnesses introduce evidence that addresses matters extending “well beyond” the events which form the basis of the adjudicated facts thus far challenged by the Defence.²⁷ The Župljanin Defence submits that this evidence would be prejudicial to the Defence.²⁸

9. Concerning the proposed addition of ST55, the Župljanin Defence contends that his witness summary indicates he will testify on matters that are irrelevant to supporting the challenged adjudicated facts as argued by the Prosecution.²⁹ With respect to ST41, the Župljanin Defence submits that in addition to addressing adjudicated fact 1268, the summary witness statement concerns broader matters material to “other allegations” in this case.³⁰

B. Reply

10. The Prosecution requests leave to file a reply and replies that the proposed witnesses do not expand the scope of the case.³¹ It states that the complete witness statements are offered with a view to: (1) addressing the challenged adjudicated facts and (2) assisting the Trial Chamber to assess the credibility and reliability of the witnesses.³²

²² Motion, para. 8.

²³ Motion, paras 16-17.

²⁴ Motion, paras 19-21; See also Oral Submissions, 12 October 2010, T. 2 (livenote)

²⁵ *Župljanin* Response, para. 10.

²⁶ *Id.*, para. 8.

²⁷ *Id.*, para. 5.

²⁸ *Id.*, para. 8.

²⁹ *Id.*, para. 6.

³⁰ *Id.*, para. 7.

³¹ Reply, para. 1 and para. 4.

³² *Id.*, para. 4.

III. APPLICABLE LAW

A. Amending the 65 ter list

11. Pursuant to Rule 73 bis(F), the Trial Chamber may grant any motion for an amendment to the Prosecution's Rule 65 ter witness list if satisfied that to do so is in the interests of justice. The factors that may be taken into account in assessing the interests of justice include: (1) whether the Prosecution has shown good cause for the proposed addition and (2) has exercised due diligence; (3) the *prima facie* relevance and importance of the testimony; (4) the possibility of undue delay in proceedings; (5) the repetitive or cumulative nature of the testimony; (6) the stage of the proceedings; and (7) whether the Defence would suffer undue prejudice as a result of the amendment.³³ In this respect, the Trial Chamber must balance the Prosecution's duty to present the available evidence to prove its case with the right of the accused to a fair and expeditious trial.³⁴

B. Challenges to Adjudicated Facts

12. Under Rule 94(B), a Trial Chamber "[...] 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." By taking judicial notice of an adjudicated fact, a Trial Chamber "[...] establishes a well-founded presumption for the accuracy of the fact which, therefore does not have to be proven again at trial, but which, subject to that presumption, may be challenged at that trial."³⁵ Judicial notice does not shift the ultimate burden of persuasion, which rests with the Prosecution.³⁶ The effect of judicial notice is to relieve the Prosecution of its initial burden to produce evidence on the adjudicated fact.³⁷ The defence may then put the adjudicated fact into question through the introduction of contrary evidence.³⁸

13. Rule 94(B) does not specify an admissibility standard with respect to evidence tendered by the defence to challenge adjudicated facts. In order to challenge an adjudicated fact, the Appeals Chamber has held that the defence must introduce "reliable and credible" contrary evidence.³⁹ The

³³ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Decision on motion for leave to amend Prosecution's list of witnesses, 29 Aug 2008 ("Lukić Decision"), paras 24-25; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-81-T, Decision on motion to amend witness and exhibit list, 16 Jan 2008, pp. 5-6; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.1, Decision on appeals against decision admitting material related to Borovčanin's questioning, 14 Dec 2007, paras 37-38.

³⁴ *Lukić Decision*, para. 23.

³⁵ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.5, Decision on the Prosecution's interlocutory appeal against the Trial Chamber's 10 April 2003 decision on the Prosecution's motion for judicial notice of adjudicated facts, ("Milošević Decision"), 28 October 2003, p. 4.

³⁶ *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, ("Karemera Appeal Decision, 2006"), 16 June 2006, para. 42.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

reliable and credible standard must be understood in the context of the general standard for admission of evidence set out in Rule 89(C).⁴⁰

14. The threshold of admission for evidence challenging the veracity of an adjudicated fact about which judicial notice has been granted is relatively low: “what is required is not the definitive proof of reliability or credibility of the evidence, but the showing of *prima facie* reliability and credibility on the basis of sufficient indicia.”⁴¹ A conclusive evaluation of the reliability and credibility, and thus, the probative value of such evidence will only be made “in light of the totality of the evidence in the case, in the course of determining the weight to be attached to it.”⁴²

IV. DISCUSSION

A. Addition of witnesses to the 65 *ter* witness list

1. ST55 – Kotor Varoš

15. The Trial Chamber will first examine whether the testimony of ST167 challenges adjudicated facts 519⁴³, 542⁴⁴ and 943.⁴⁵ In relation to adjudicated fact 943, when asked if he knew of a Serbian army attack in mid-August 1992 on Dabovci village and its razing to the ground, ST167 replied: “No, I’m not aware of that.”⁴⁶ Then, in relation to adjudicated fact 542, when asked if he knew that Bosnian Serb forces frequently robbed Bosnian Muslim homes in the village of Dabovci, ST167 replied “no”.⁴⁷ The Trial Chamber considers that ST167’s lack of awareness or knowledge of events, as conveyed during cross-examination, does not constitute a *prima facie* reliable and credible challenge to adjudicated facts 542 or 943.

⁴⁰ *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.17, Decision on Joseph Nzirorera’s appeal of decision on admission of evidence rebutting adjudicated facts, (“*Karemera* Appeal Decision, 2009”), 29 May 2009, para. 14.

⁴¹ *Karemera* Appeal Decision, 2009, para. 15, citing *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Judgement, 3 May 2006, para. 402; *Prosecutor v. Zejnil 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, 4 March 1998, paras 17 and 20.

⁴² *Karemera* Appeal Decision, 2009, para. 15.

⁴³ Adjudicated Facts Decision, Annex A, p. 43. Adjudicated fact 519 is the following: In Kotor Varoš municipality, the take-over of power by the SDS was achieved in June 1992 through attacks by Bosnian Serb armed forces on the town of Kotor Varoš and villages of Večići, Hrvačani, Ravne, Hanifići and other villages, all of which were inhabited by Muslims or Croats. During these attacks, a number of people were killed. Most inhabitants of these villages eventually fled to neighbouring areas.

⁴⁴ Adjudicated Facts Decision, Annex A, p. 45. Adjudicated fact 542 is the following: In the village of Dabovci, Bosnian Serb forces frequently looted Bosnian Muslim homes.

⁴⁵ Adjudicated Facts Decision, Annex A, p. 79. Adjudicated fact 943 is the following: At least three Bosnian Muslim men from Dabovci were killed after Bosnian Serb soldiers had destroyed their village in mid-August of 1992. The men, all civilians, were taken to a nearby place and were summarily executed by the soldiers.

⁴⁶ ST167, 30 Jun 2010, T.12456.

⁴⁷ ST167, 30 Jun 2010, T.12461.

16. Similarly, in relation to the portions of adjudicated fact 519 addressing an attack on villages in the municipality of Kotor Varoš and the ethnic composition of the attacked villages, ST167 stated that “[...] all these houses [along the main road of Dabovci] are intact”⁴⁸ and that “[...] as for Dabovci village [...], it’s a place populated by Serbs.”⁴⁹ The Trial Chamber notes that ST167’s testimony on the attack and the ethnic composition in Dobovci is equivocal. He may have been referring to the present situation rather than that in June 1992. The Trial Chamber therefore considers that ST167’s testimony, by itself, does not constitute a *prima facie* reliable and credible challenge to adjudicated fact 519.

17. In the absence of a *prima facie* reliable and credible challenge to adjudicated facts 542, 943 and 519, the Trial Chamber concludes that no good cause has been shown with respect to the addition of ST55 to the 65 *ter* list. The Trial Chamber will therefore not consider other factors relevant to amending 65 *ter* lists.

2. ST41 - Dobož

18. The Trial Chamber will next consider the addition of ST41 who is proposed to address the testimony of ST216 and ST162 on adjudicated fact 1268 on the discriminatory application of a curfew to non-Serbs in Dobož in May 1992.⁵⁰ Under cross-examination ST216 stated that the curfew in Dobož in 1992 applied to “all citizens”.⁵¹ Similarly, under cross-examination ST162 confirmed that the decision to impose a curfew in Dobož applied to “[...] all citizens except for authorised officials and persons working for bodies of special interest [...]”.⁵²

19. Accordingly, the Trial Chamber considers that the testimony of ST216 and ST162 constitute a *prima facie* reliable and credible challenge to adjudicated fact 1268 pertaining to the discriminatory application of a curfew to non-Serbs in Dobož in May 1992. On the basis of this unequivocal testimony the Trial Chamber is satisfied that the Prosecution has, in this case, sufficiently demonstrated good cause for the addition of ST41 to the 65 *ter* list.

20. Furthermore, the Trial Chamber is persuaded that the evidence associated with ST41 is *prima facie* relevant to the challenged adjudicated fact and of sufficient importance to the charges in the indictment. Equally, the Trial Chamber does not consider that the Defence would be unduly

⁴⁸ ST167, 30 Jun 2010, T.12457.

⁴⁹ ST167, 30 Jun 2010, T.12457, 30 Jun 2010, T.12456.

⁵⁰ Adjudicated Facts Decision, Annex A, p. 116. Adjudicated fact 1268 is the following: On 3 May [1992], Serb paramilitaries, the JNA, and the police took over Dobož town. The Serb crisis staff took control of the municipality, and all remaining Muslim police officers were arrested. Muslims and Croats were ordered to surrender their weapons. The Serb authorities issued a curfew allowing Muslims and Croats to be outside their homes for only two hours per day, prompting many Muslims and Croats to leave town.

⁵¹ ST216, 28 Apr 2010, T. 9366-9367, 11 May 2010, 9368-9371.

prejudiced by the addition of ST41 on the basis that his statement was already disclosed to the Defence during pre-trial proceedings.⁵³ For this same reason, the Trial Chamber is not persuaded that the Prosecution is seeking to expand the scope of the case. Therefore, the Trial Chamber is satisfied that it is in the interests of justice to allow the addition of ST41 to the Prosecution's Rule 65 *ter* witness list. ST41's testimony shall be limited to the substance of the challenged adjudicated fact.

B. Expansion of Testimony

1. ST26 and ST240 – Kotor Varoš

21. For the reasons set forth above with respect to ST55, the Trial Chamber is not persuaded that a *prima facie* reliable and credible challenge has been made to adjudicated facts 542 and 943.⁵⁴ Accordingly, the Trial Chamber is not persuaded that the scope of testimony of ST26 and ST240 should be expanded.

2. ST17 – Ključ

22. The Trial Chamber therefore moves on to consider the Prosecution's request to expand the scope of testimony of ST17 in order to address the testimony of ST54 concerning adjudicated facts 558⁵⁵, 559⁵⁶, 561⁵⁷, 562⁵⁸ and 563.⁵⁹ These facts set out a chain of events pertaining to the 1 June 1992 killing of civilians at the old primary school in Velagići in the municipality of Ključ. The Trial Chamber notes that prior to the opening of ST54's testimony, the Prosecution stated that it would not call evidence related to the 1 June 1992 killings at Velagići because they were adequately addressed by adjudicated facts.⁶⁰ As these five adjudicated facts are interlinked, the Trial Chamber will assess whether the Župljanin Defence has presented a *prima facie* reliable and credible challenge with respect to these adjudicated facts as a whole.

⁵² ST162, 11 May 2010, T. 9933-9934, 11 May 2010, T. 9945-9943.

⁵³ Motion, para. 27.

⁵⁴ See *supra*, para. 15.

⁵⁵ Adjudicated Facts Decision, Annex A, p. 46. Adjudicated fact 558 is the following: During the evening of 1 June 1992, Bosnian Serb police from the checkpoint at Velagići sent a man to the predominantly Bosnian Muslim hamlets of Vojići, Nežići, Hašići, Častovići and Hadžići. He informed the local population that they were obliged to come to Velagići.

⁵⁶ Adjudicated Facts Decision, Annex A, p. 46. Adjudicated fact 559 is the following: In the old primary school in Velagići, around a hundred residents from these hamlets were confined.

⁵⁷ Adjudicated Facts Decision, Annex A, p. 47. Adjudicated fact 561 is the following: Shortly before midnight, people were taken out from the school and ordered to line up in front of the building.

⁵⁸ Adjudicated Facts Decision, Annex A, p. 47. Adjudicated fact 562 is the following: Then, two Bosnian Serb soldiers armed with automatic rifles opened fire on them.

⁵⁹ Adjudicated Facts Decision, Annex A, p. 47. Adjudicated fact 563 is the following: At least 77 civilians were killed in this incident.

⁶⁰ ST54, 3 Feb 2010, T. 6052.

23. The Motion identifies Exhibit 2D042 as the basis of the Župljanin Defence's purported challenge to the five adjudicated facts.⁶¹ The document is a request from the Military Prosecutor's Office in Banja Luka to the military investigating judge to commence an investigation into the 1 June 1992 killing of civilians at the local school in Velagići allegedly by named military personnel ("Military Prosecutor's Request").⁶² The Military Prosecutor's Request is consistent with the adjudicated facts to the extent that it confirms the killing of civilians by Bosnian Serb soldiers on 1 June 1992 at the local school in Velagići.⁶³ However, the descriptions of the circumstances leading to the killing of the civilians in the adjudicated facts and in the Military Prosecutor's Request are inconsistent. For example, the description in the Military Prosecutor's Request indicates that six of the civilians detained at the local school in Velagići were shot because they "began using insulting language."⁶⁴ The Military Prosecutor's Request further indicates that "an argument began between them [the civilians] and the guards in the school, so that at one point a group of civilians tried to escape [...] [and] at that moment, [guards] [...] opened fire and shot dead all the persons who were escaping from the school."⁶⁵ By contrast, the adjudicated facts indicate that the civilians detained at the local school in Velagići were ordered to line up and then Bosnian Serb soldiers opened fire on them.⁶⁶ On this basis, the Trial Chamber considers that there is a *prima facie* reliable and credible challenge to adjudicated facts 558, 559, 561, 562 and 563.

24. Furthermore, the Trial Chamber considers that the proposed expansion of ST17's testimony, a personal account of these events, is relevant to the adjudicated facts and has probative value. The Trial Chamber does not consider that expanding the scope of his testimony will unduly prejudice the Defence as they have been on sufficient notice of this testimony. Therefore, the Trial Chamber is satisfied that it is in the interests of justice to allow ST17 to testify as to these matters.

3. ST253 – Teslić

25. The Trial Chamber will next consider the Prosecution's request to expand the scope of testimony of ST253 in order to address the testimony of ST207 and ST191 on adjudicated facts 1214 and 1215.

26. Adjudicated fact 1214, concerning events in the town of Teslić in April 1992, essentially encompasses four elements: (1) the barricading of the town; (2) the appearance of road signs in

⁶¹ 2D0042, Request by Military Prosecutor's office in Banja Luka to the military investigating judge for an investigation, 8 March 1993.

⁶² *Ibid.*

⁶³ *Id.*, para. 12.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Adjudicated facts 561 and 562. See Adjudicated Facts Decision, Annex A, p. 47.

Cyrillic; (3) the Teslić SJB had become part of the Banja Luka CSB; and (4) non-Serb police officers were fired by the SDS appointed president of the municipality.⁶⁷ The challenged element of the adjudicated fact concerns the appearance of road signs in Cyrillic. The Trial Chamber will assess whether the Župljanin Defence has presented a *prima facie* reliable and credible challenge with respect to this element.

27. When asked under cross-examination if traffic signs or other signs were changed from Latin to Cyrillic script, ST207 stated, “That did not happen.”⁶⁸ When asked the same question under cross-examination, ST191 affirmed that no road signs had been changed to Cyrillic.⁶⁹ The Trial Chamber considers that on the basis of this testimony, there is a *prima facie* reliable and credible challenge to this element of adjudicated fact 1214.

28. Turning to adjudicated fact 1215, which concerns events in the town of Teslić around May 1992, it essentially encompasses three elements: (1) the arrival of paramilitary groups; (2) the beating and killing (by the paramilitary groups) of people around the town; and (3) the destruction of or damage to Muslim and Croat properties including mosques and churches.⁷⁰ The challenged element of the adjudicated fact is the arrival of paramilitary groups in Teslić. The Trial Chamber will assess whether the Župljanin Defence has presented a *prima facie* reliable and credible challenge with respect to this element of adjudicated fact 1215.

29. When asked under cross-examination if, as far as he knew, “Arkan’s Men” were present in the municipality of Teslić in May 1992, ST207 replied, “I don’t have any knowledge about their presence.”⁷¹ When asked if the “White Eagles” or “Šešelj’s Group” were present, ST207 replied, “No.”⁷² Finally, when asked if there were any other paramilitary groups present in Teslić between May and July 1992, save for early June when “this group from Doboj” arrived, ST207 replied, “Not that I know of.”⁷³

30. The Trial Chamber considers ST207’s testimony, denying the presence in Teslić of paramilitary groups explicitly mentioned—Arkan’s Men and the White Eagles—in the adjudicated

⁶⁷ Adjudicated Facts Decision, Annex A, p. 109. Adjudicated fact 1214 is the following: In April 1992, Teslić town was barricaded and road signs appeared in Cyrillic. The Teslić SJB, which had been part of the Doboj CSB under the Bosnia-Herzegovina MUP, became part of the Banja Luka CSB. The SDS appointed president of the municipality fired all non-Serb police officers.

⁶⁸ ST207, 13 May 2010, T.10139.

⁶⁹ ST191, 13 May 2010, T.10258.

⁷⁰ Adjudicated Facts Decision, Annex A, p. 109. Adjudicated fact 1215 is the following: Around May 1992, many paramilitary groups, such as Arkan’s Men, the White Eagles, and the Red Berets arrived in the town of Teslić. They beat and killed people around the town and destroyed or damaged Muslim and Croat properties, including five or six mosques in Teslić town and surrounding villages as well as Catholic churches.

⁷¹ ST207, 13 May 2010, T.10139.

⁷² ST207, 13 May 2010, T.10139.

⁷³ ST207, 13 May 2010, T.10139.

fact, a *prima facie* reliable and credible challenge to this element of adjudicated fact 1215. This notwithstanding that he acknowledges the presence of a “group from Doboј”, which partly supports the adjudicated fact in that many paramilitary groups were present.⁷⁴

31. Furthermore, the Trial Chamber considers that ST253’s testimony, which includes discussion of the curfew and the presence of paramilitary groups in Teslić in 1992, is relevant to the adjudicated facts and has probative value. The Trial Chamber does not consider that expanding the scope of his testimony will unduly prejudice the Defence as they have been on sufficient notice of this testimony. Therefore, the Trial Chamber is satisfied that it is in the interests of justice to allow ST253 to testify as to these matters.

V. DISPOSITION

For the foregoing reasons, pursuant to Rules 65 *ter*, 89(C) and (D), the Trial Chamber:

GRANTS leave to the Prosecution to file its Reply and accepts it;

GRANTS the Motion and permits the addition of ST41 to the 65 *ter* witness list;

AFFIRMS the oral decision on expansion of the scope of testimony of ST17;

GRANTS the Motion to expand the scope of testimony of ST253;

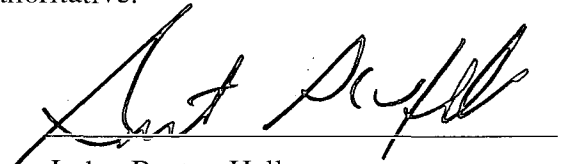
DENIES the remainder of the Motion;

ORDERS that the testimony of each witness shall be limited to the substance of the corresponding challenged adjudicated fact or facts and that the total time previously granted to the Prosecution to present its case shall not be exceeded; and

⁷⁴ ST207, 13 May 2010, T.10139.

ORDERS the Prosecution to submit any application for the admission of the evidence of ST41 pursuant to Rule 92 *bis* no later than seven days from the date of this Decision.

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



Judge Burton Hall
Presiding

Dated this twelfth day of October 2010

At The Hague

The Netherlands

[Seal of the Tribunal]