



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: 29 June 2011
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 29 June 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION PARTIALLY GRANTING MOTION OF
MIĆO STANIŠIĆ FOR JUDICIAL NOTICE OF
ADJUDICATED FACTS**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

TRIAL CHAMBER II (“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 seized of “Mr. Mićo Stanišić’s motion for judicial notice of adjudicated facts, with annex” (“Motion”), filed by the Defence of Mićo Stanišić (“Defence”) on 28 March 2011. The Prosecution filed its response to the Motion on 11 April 2011.¹ The Defence of Stojan Župljanin did not respond.

I. SUBMISSIONS

A. Defence

1. Pursuant to Rule 94(B), the Defence requests the Trial Chamber to take judicial notice of 83 facts that it submits have been adjudicated at trial and settled on appeal in the following cases: *Prosecutor v. Radislav Brdanin*; *Prosecutor v. Delalić et al.*; *Prosecutor v. Blagoje Simić*; *Prosecutor v. Milomir Stakić*.² The Defence further submits that all proposed facts comply with the criteria enumerated by the Trial Chamber in *Prosecutor v. Popović et al.*,³ (“*Popović Requirements*”) on which this Chamber relied in its prior ruling on adjudicated facts (“*First Adjudicated Facts Decision*”).⁴

B. Prosecution

2. The Prosecution seeks denial of 65 of the 83 proposed adjudicated facts, and sets out the specific reasons for opposing the proposed facts in Annex A to the Response.⁵

3. The Prosecution submits that, for 43 proposed facts taken from the *Simić* trial judgement, there is nothing to indicate whether they were actually adjudicated by the *Simić* Chamber, or if instead they simply constitute a recital of the evidence given by one or more witnesses on a certain issue.⁶ The Prosecution does not oppose judicial notice of all the proposed facts taken from the *Simić* judgement, but it submits that care should be exercised in taking judicial notice of them, asserting that they stand in contrast to other parts of the judgement specifically dedicated to factual findings.⁷

¹ Prosecution response to the *Stanišić motion for judicial notice of adjudicated facts, with annex*, with annex, 11 April 2011 (“*Response*”).

² Motion, para. 2.

³ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution motion for judicial notice of adjudicated facts, 26 September 2006.

⁴ Decision granting in part Prosecution’s motions for judicial notice of adjudicated facts pursuant to Rule 94(B), 1 April 2010.

The Prosecution states its position with regard to each of the proposed facts in Annex A to the Response.

II. APPLICABLE LAW

4. The Chamber refers to the applicable law as set out in paragraphs 24 and 25 of the First Adjudicated Facts Decision.

III. DISCUSSION

5. Before moving to the analysis of the proposed facts and deciding whether to take judicial notice of them, the Chamber will address the Prosecution's submission that for 43 of the 83 proposed facts it is difficult to ascertain whether the *Simić* Trial Chamber was making a finding of fact, or was instead reciting the evidence of a witness. Indeed, judgements may contain sections in which a Trial Chamber merely recalls evidence given by one or more witnesses on a certain topic, and this evidence may or may not then be accepted by the Trial Chamber in reaching its determinations. Therefore, it needs to be considered on a case by case basis, and in the context of the judgement as a whole, whether the Trial Chamber accepted that evidence and made its findings in accordance with it. In the Chamber's view, only such findings constitute "adjudicated facts" within the meaning of Rule 94(B) of the Rules. The Chamber further considers that, where it is unclear whether certain proposed facts are actually adjudicated facts, and not simply the recital of testimonial or documentary evidence, the burden to show that they belong to the former category rests on the moving party.

6. Upon an analysis of the 83 proposed facts in accordance with this guiding principle, the Chamber finds that 12 of them appear to be simply an account of what certain witnesses stated during trial. Without the necessary indications by the Stanišić Defence, the Chamber is not in a position to assess whether the facts, as they have been submitted for judicial notice, were eventually adjudicated by a Trial Chamber. On this basis, the Chamber declines to take judicial notice of proposed facts 17, 37, 40, 42, 44, 45, 47, 54, 61, 74, 76 and 77.

7. Further, some of the proposed facts fall short of meeting the *Popović* Requirements, which the Chamber applied in deciding on the First Adjudicated Facts Decision. Accordingly, the Chamber declines to take judicial notice of:

⁵ Response, para. 7.

⁶ Response, paras 4 and 6.

⁷ Response, para. 5.

- proposed facts 3, 4, 11, 18 and 30, on the grounds that each is “unclear or misleading in the context in which it is placed in the moving party’s motion”;⁸
- proposed facts 24, 68 and 73 on the grounds that none is “distinct, concrete and identifiable”;⁹ and
- proposed fact 31 on the grounds that it “contain[s a] characterisation[...] of an essentially legal nature”.¹⁰

8. Furthermore the Chamber, in accordance with its discretionary power under Rule 94(B) and considering the additional criteria applied in the First Adjudicated Facts Decision, declines to take judicial notice of proposed facts 53, 63, 64, 65, 66, 67, 69, 70, 71 and 72 on the grounds that each contains subjective assessments, opinions and inferences which cannot be considered to be of a factual nature.¹¹

9. Finally, the Trial Chamber exercises the power, *proprio motu*, to take judicial notice of paragraphs 390 and 508 of the *Simić* trial judgement and paragraph 86 of the *Stakić* trial judgement in lieu of, respectively, proposed facts 19, 26 and 82. Proposed fact 19, which corresponds to paragraph 313 of the *Simić* trial judgement, is the Trial Chamber’s recollection of a witness’s testimony, rather than an adjudicated fact. However, in paragraph 390 of the *Simić* trial judgement the Trial Chamber made a finding in line with the evidence recalled in paragraph 313. Proposed facts 26 and 82 lack relevant information which is instead contained respectively in paragraphs 508 of the *Simić* trial judgement and 86 of the *Stakić* trial judgement. The Chamber is of the view that these paragraphs can be admitted in their entirety in order to provide a more accurate and complete description of the facts adjudicated in those trials.

IV. DISPOSITION

10. For the foregoing reasons, pursuant to Rule 94(B) of the Rules, the Trial Chamber:

GRANTS the Motion **IN PART**;

TAKES JUDICIAL NOTICE of:

⁸ See First Adjudicated Facts Decision, para. 24, n. 4.

⁹ *Id.*, para. 24, n. 2.

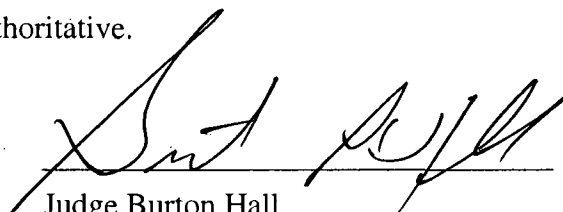
¹⁰ *Id.*, para. 24, n. 6.

¹¹ *Id.*, para. 47.

- proposed facts 1, 2, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 20, 21, 22, 23, 25, 27, 28, 29, 32, 33, 34, 35, 36, 38, 39, 41, 43, 46, 48, 49, 50, 51, 52, 55, 56, 57, 58, 59, 60, 62, 75, 78, 79, 80, 81 and 83, as submitted in the Annex to the Motion;
- paragraph 390 of the *Simić* trial judgement, in lieu of proposed fact 19;
- paragraph 508 of the *Simić* trial judgement, in lieu of proposed fact 26;
- paragraph 86 of the *Stakić* trial judgement, in lieu of proposed fact 82;

DECLINES TO TAKE JUDICIAL NOTICE of proposed facts 3, 4, 11, 17, 18, 19, 24, 26, 30, 31, 37, 40, 42, 44, 45, 47, 53, 54, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77 and 82.

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



Judge Burton Hall
Presiding

Dated this twenty-ninth day of June 2011

At The Hague

The Netherlands

[Seal of the Tribunal]