



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: 18 July 2011
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 18 July 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING THE PROSECUTION'S
REQUEST FOR RECONSIDERATION OF THE
DECISION PARTIALLY GRANTING THE 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 (“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 “Prosecution’s request for reconsideration, or in the alternative certification to appeal, of the decision partially granting the motion of Mićo Stanišić for judicial notice of adjudicated facts” (“Request”), filed on 5 July 2011, whereby the Prosecution requests the Trial Chamber either to reconsider its “Decision partially granting motion of Mićo Stanišić for judicial notice of adjudicated facts”, rendered on 29 June 2011 (“Decision”), insofar as it took judicial notice of proposed facts 5, 6, 7 and 8, which relate to the demographics evidence of Dr. Ewa Tabeau; or, in the alternative, to grant certification to appeal the Decision in relation to these facts;¹

NOTING “Mr Stanisic’s opposition to the Prosecution’s request for reconsideration, or in the alternative certification to appeal, of the decision partially granting the motion of Mico Stanisic for judicial notice of adjudicated facts”, filed on 11 July 2011 (“Response”), whereby the Defence of Mićo Stanišić (“Stanišić Defence”) submits that the Request meets neither the standard for reconsideration, nor the test for certification pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”), and that therefore the Request should be denied;

RECALLING that a Trial Chamber has a discretionary power to reconsider a previous decision if a clear error of reasoning has been demonstrated or if particular circumstances justify reconsideration in order to prevent an injustice; and that “particular circumstances” can include new facts or new arguments;²

CONSIDERING that the Prosecution raises a legitimate concern in its Request, namely that the findings in proposed facts 5, 6, 7 and 8 relate to an earlier report prepared by Ewa Tabeau for the *Simić* case, and that the deficiencies in that report, which were pointed out by the *Simić* Trial Chamber as reflected in proposed facts 5, 6, 7 and 8, have been addressed in the report by Ewa Tabeau tendered in the present case;

CONSIDERING that the arguments now submitted by the Prosecution in its Request more fully explain the nature of the objections previously made in relation to proposed facts 5, 6, 7, 8;

¹ Request, paras 1, 17.

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić’s Interlocutory Appeal against the Decision on Prlić Defence Motion for Reconsideration of the Decision and Admission of Documentary Evidence, 3 Nov 2009, para. 18.

FURTHER CONSIDERING that through these clarifications the Prosecution has demonstrated a clear error of reasoning in the Decision, and that therefore a partial reconsideration of it is necessary in order to prevent an injustice;

HEREBY RECONSIDERS its decision to take judicial notice of adjudicated facts 5, 6, 7 and 8; and

AMENDS the disposition in paragraph 10 of the Decision as follows:

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

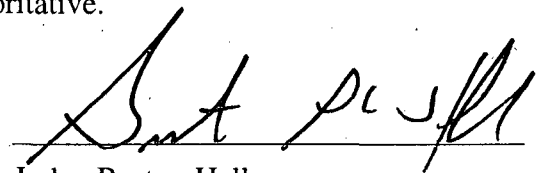
GRANTS the Motion **IN PART**;

TAKES JUDICIAL NOTICE of:

- proposed facts 1, 2, 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, 5, 6, 7, 8, 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 eighteenth day of July 2011

At The Hague

The Netherlands

[Seal of the Tribunal]