

IT-09-92-T
D40808-040805
05 June 2012

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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-09-92-T
Date: 5 June 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 5 June 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON *PROPRIO MOTU* TAKING JUDICIAL NOTICE
OF TWO ADJUDICATED FACTS**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 21 March 2012, the Chamber issued its “Second Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts” (“Second Decision”), in which it declined to take judicial notice of two facts proposed by the Prosecution (“Proposed Facts”) because it found that they were based on agreed facts in the Trial judgement to which they were sourced by the Prosecution.¹ In relation to these two Proposed Facts, the Chamber informed the parties that it would consider taking judicial notice, *proprio motu*, of certain adjudicated facts originating from the Trial Chamber’s judgement in the case of *Prosecutor v. Krstić* (“Krstić Trial Judgement”), after hearing from the parties.² The Chamber instructed the parties to convey their position in relation to these two adjudicated facts within 10 days of the filing of the Second Decision.³

2. On 2 April 2012, the Prosecution filed its submission, informing the Chamber that it did not object to the Chamber taking judicial notice, *proprio motu*.⁴ On 10 April 2012, the Defence filed its submission, requesting that the Chamber decline to take judicial notice (“Defence Submission”).⁵ On 24 April 2012, the Prosecution responded to the Defence Submission, submitting that the Proposed Facts were not based on agreed facts, and requesting that the Chamber dismiss the Defence’s submission, and take judicial notice of the Proposed Facts as originally submitted (“Prosecution’s Response”).⁶

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing a Trial Chamber taking judicial notice of adjudicated facts pursuant to Rule 94 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) as set out in a previous decision.⁷

4. Rule 127 of the Rules provides, in relevant part, that:

(A) A Trial Chamber or Pre-Trial Judge may, on good cause being shown by motion,

¹ Second Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 21 March 2012, para. 30.

² Second Decision, para. 31.

³ Second Decision, para. 36.

⁴ Prosecution Submission Pursuant to the Chamber’s Instruction in the Second Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 2 April 2012, para. 2.

⁵ Defence Submission Pursuant to the Chamber’s Instruction in the Second Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 10 April 2012, paras 3, 14.

⁶ Prosecution Response to Defence Submissions Pursuant to Chamber’s Instruction in the Second Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 24 April 2012, paras 1, 5-12.

⁷ First Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts (“First Decision”), 28 February 2012, paras 7-8.

- (ii) recognize as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired.

III. DISCUSSION

5. Contrary to its instruction, the Defence Submission was not filed within 10 days from the filing of the Second Decision. The Chamber notes that the Defence Submission does not argue any showing of good cause to recognize it as validly filed despite the expiration of time, as required by Rule 127 of the Rules. The Chamber therefore considers the Defence Submission as not validly filed and will not consider it further. Accordingly, the Chamber will also not further address the Prosecution Response to the Defence Submission.

6. The Chamber carefully considered the applicable law in relation to taking judicial notice of adjudicated facts. In this respect, the Chamber recalls its discussion in a prior decision regarding essentially subjective qualifications,⁸ as well as its consideration regarding the reformulation of proposed facts, as opposed to rejecting them in their entirety.⁹ The Chamber finds that certain portions of facts adjudicated in paragraphs 21 and 66 of the *Krstić* Trial Judgement contain essentially subjective qualifications, which reflect the impressions of the *Krstić* Trial Chamber and, as such, are not only factual findings. However, subject to reformulation in order to remove these subjective qualifications, they meet all the other criteria for taking judicial notice.

⁸ First Decision, para. 27.

⁹ First Decision, para. 33.

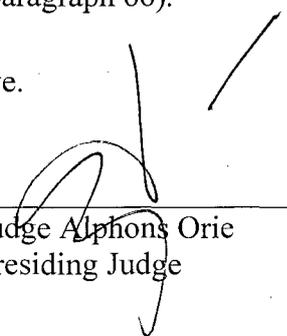
IV. DISPOSITION

7. Based on the reasoning set forth above and pursuant to Rules 94 (B) and 127 (A) (ii) of the Rules, the Chamber:

TAKES, *proprio motu*, judicial notice of the following adjudicated facts:

1. The 28th Division of the ABiH forces that remained in the enclave lacked a firm command structure and communications system, and some ABiH soldiers carried old hunting rifles or no weapons at all. (*Krstić* Trial Judgement, paragraph 21).
2. During the nights, individual prisoners in Bratunac were called out, and cries of pain and gunfire could be heard. (*Krstić* Trial Judgement, paragraph 66).

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



Judge Alphons Orié
Presiding Judge

Dated this fifth of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]