



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-03-67-T
Date: 23 July 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr John Hocking

Decision of: 23 July 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT WITH ANNEX

**DECISION ON PROSECUTION MOTION FOR
JUDICIAL NOTICE OF FACTS ADJUDICATED BY *KRAJIŠNIK* CASE**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

I. INTRODUCTION

1. Trial Chamber III (“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 a motion for judicial notice of facts adjudicated in the *Prosecutor v. Momčilo Krajišnik* Case, pursuant to Rule 94(B) of the Rules of Procedure and Evidence (“Rules”), filed by the Office of the Prosecutor (“Prosecution”) on 29 April 2010 (“Motion”).¹

II. PROCEDURAL BACKGROUND

2. On 29 April 2010, the Prosecution filed its Motion whereby it requested that judicial notice be taken of 194 facts extracted from the *Krajišnik* Case judgement (“Judgement”).²

3. The Accused did not respond to this motion within 14 days of receipt of the BCS version as granted to him by Rule 126*bis* of the Rules.³

III. ARGUMENTS OF THE PROSECUTION

4. The Prosecution submits that the facts whose admission is requested and which relate to events in Bosnia and Herzegovina between 1990 and 1992 prove the existence of a Joint Criminal Enterprise (“JCE”) aimed at expelling Muslims and Croats from Serbian territory in Bosnia.⁴ Likewise, the Prosecution submits that the facts relating to events in the municipalities of Bijeljina, Brčko, Ilidža, Novo Sarajevo and Nevesinje prove counts 1, 4, 8-11 and 12-14 of the Indictment and the implementation of the JCE.⁵ The Prosecution deems that judicial notice promotes the interests of justice and guarantees a fair trial by avoiding repetitive litigation of facts already proven in past proceedings.⁶ Finally, the Prosecution deems that judicial

¹ Prosecution Motion for Judicial Notice of Facts Adjudicated by *Krajišnik* Case, 29 April 2010.

² *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, Judgement, 27 September 2006 (“Judgement”).

³ The Accused received the BCS version of the Motion on 8 June 2010 (*see* Procès-verbal of Receipt filed on 14 June 2010).

⁴ Motion, para. 5.

⁵ *Ibid.*

⁶ Motion, para. 7.

notice of the 194 facts listed in the annex to its Motion would be in line with judicial economy and consistency of Tribunal jurisprudence without offending the Accused's right to a fair trial.⁷

IV. APPLICABLE LAW

5. Rule 94(B) of the Rules stipulates that, at the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, 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.

6. The Appeals Chamber deemed that "by taking judicial notice of an adjudicated fact, a Chamber establishes a well-founded presumption for the accuracy of this fact, which therefore does not have to be proved again at trial".⁸ Likewise, it also held the following:

"[J]udicial notice does not shift the ultimate burden of persuasion, which remains with the Prosecution. In the case of judicial notice [...], the effect is only to relieve the Prosecution of its initial burden to produce evidence on the point; the Defence may then put the point into question by introducing reliable and credible evidence to the contrary."⁹

7. When exercising its discretionary power, the Chamber therefore ascertains that the facts at issue actually meet the criteria laid down by Rule 94(B) of the Rules and developed by jurisprudence¹⁰, that is to say, that these facts:

⁷ Motion, para. 8.

⁸ *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 Prosecution Motion for Judicial Notice of Adjudicated Facts", 28 October 2003, p. 4.

⁹ *Prosecutor v. Édouard Karamera et al.*, Case No. ICTR-98-44-AR73(C), "Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice", 16 June 2006, para. 42.

¹⁰ In this sense, see in particular *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Vladimir Šantić*, Case No. IT-95-16-A, "Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence pursuant to Rule 115 and for Judicial Notice to Be Taken pursuant to Rule 94(B)", 8 May 2001; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, "Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92bis", 28 February 2003; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, "Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts", 10 April 2003; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-T, "Decision on Judicial Notice of Adjudicated Facts Following the Motion Submitted by Counsel for the Accused Hadžihasanović and Kubura on 20 January 2005", 14 April

- 1) relate to the Indictment;¹¹
- 2) are concrete, distinct and identifiable particularly by specific references to paragraphs or parts of the previous judgement;¹²
- 3) are formulated in the proposed wording by the party seeking judicial notice in a way that does not differ significantly from the wording adopted in the original judgement;¹³
- 4) are not unclear or misleading in the context in which they have been placed in the moving party's motion;¹⁴
- 5) are not based on an agreement between the parties to the original proceedings;¹⁵
- 6) do not relate to the acts, conduct or the mental state of the accused;¹⁶

2005; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, "Decision on Appellant's Motion for Judicial Notice", 1 April 2005; *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Valentin Ćorić and Berislav Pušić*, Case No. 04-74-PT, "Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94 (B)", 14 March 2006; *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević*, Case No. IT-05-88-T, "Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex", 26 September 2006; *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case ICTR-98-44-T, "Decision on Prosecution's Motion for Judicial Notice", 30 April 2004.

¹¹ *Prosecutor v. Niyitegeka*, Case ICTR-96-14-A, "Reasons for Oral Decision Rendered 21 April 2004 on Appellant's Motion for Admission of Additional Evidence and for Judicial Notice", 17 May 2004, para. 16.

¹² See, for example, *Prosecutor v. Perišić*, Case No. IT-04-81-PT, "Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts Concerning Sarajevo", 26 June 2008, para. 18; *Prosecutor v. Stanišić*, Case No. IT-04-79-PT, "Decision on Judicial Notice", 14 December 2007, para. 37; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94 (B)", 14 March 2006, para. 12; *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-T, "Decision on Judicial Notice of Adjudicated Facts Following the Motion Submitted by Counsel for the Accused Hadžihasanović and Kubura on 20 January 2005", 14 April 2005, p. 5; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, "Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts", 24 March 2005, para. 14; *Prosecutor v. Kupreškić*, Case No. IT-95-16-A, "Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence pursuant to Rule 115 and for Judicial Notice to Be Taken pursuant to Rule 94(B)", 8 May 2001, para. 12.

¹³ *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, "Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts", 24 March 2005, para. 14.

¹⁴ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, "Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex", 26 September 2006, para. 8.

¹⁵ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, "Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex", 26 September 2006, para. 11; *Prosecutor v. Mejakić*, Case No. IT-02-65-PT, "Decision on Prosecution Motion for Judicial Notice pursuant to Rule 94(B)", 1 April 2004, p. 4; *Prosecutor v. Krajišnik*, Case No. IT-00-39-PT, "Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92bis", 28 February 2003, para. 15.

7) are final and against which no appeal or review proceedings are under way;¹⁷

8) cannot reasonably be contested by the opposing party;

9) represent only factual findings and do not contain any legal characterisation or subjective opinion;¹⁸

10) do not compromise the right of the Accused to a fair trial.

V. DISCUSSION

8. The Chamber has analysed the 194 facts in the Motion sought for judicial notice by the Prosecution in light of the arguments presented and the criteria set forth above.

9. The Chamber deems that no judicial notice can be taken of the facts under the following numbers in the Annex to the Motion on the grounds that they are **not sufficiently clear**: 24, 25, 26, 50, 52, 53, 63, 97, 144, 148, 156, 160, 171 and 186.

10. Furthermore, the Chamber deems that no judicial notice can be taken of the facts under the following numbers in the Annex to the Motion on the grounds that they may allege the **responsibility of the Accused** – as they refer in particular to the objective or members of the alleged joint criminal enterprise as well as to persons for whom the Accused is held responsible – or are linked to a **fundamental question or the crimes alleged in the Indictment**: 14, 55, 82, 83, 124, 125, 145, 147, 161, 164, 169, 170, 172, 173, 178, 183, 184, 185, 193 and 194.

¹⁶ *Prosecutor v. Kupreškić*, Case No. IT-95-16-A, “Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence pursuant to Rule 115 and for Judicial Notice to Be Taken pursuant to Rule 94(B)”, 8 May 2001, para. 6.

¹⁷ *Prosecutor v. Kupreškić*, Case No. IT-95-16-A, “Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence pursuant to Rule 115 and for Judicial Notice to Be Taken pursuant to Rule 94(B)”, 8 May 2001, para. 6.

¹⁸ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-AR73.1, “Decision on Interlocutory Appeals against Trial Chamber’s Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Prosecution’s Catalogue of Agreed Facts”, 26 June 2007, paras 19-22; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, “Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex”, 26 September 2006, para. 10; *Prosecutor v. Mejakić*, Case No. IT-02-65-PT, “Decision on Prosecution Motion for Judicial Notice pursuant to Rule 94(B)”, 1 April 2004, p. 4; *Prosecutor v. Blagojević et al.*, Case No. IT-02-60-T, “Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence”, 19 December 2003, para. 16.

11. The Chamber also deems that no judicial notice can be taken of the fact under the following number in the Annex to the Motion on the grounds that it **is not in line with the Judgement**: 71.

12. Likewise, the Chamber deems that no judicial notice can be taken of the fact under the following number in the Annex to the Motion on the grounds that it is **repetitive with regard to an already adjudicated fact**: 77.¹⁹

13. The Chamber also deems that no judicial notice can be taken of the facts under the following numbers in the Annex to the Motion on the grounds that they do not represent simple factual findings but contain **subjective opinions**: 11, 96 and 122.

14. The Chamber has deemed it appropriate to take judicial notice of the fact under the following number in the Annex to the Motion **subject to changes made by the Chamber**: 157.²⁰

15. Finally, the Chamber has deemed it appropriate to take judicial notice, with no changes, of the facts under the following numbers in the Annex to the Motion: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 54, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 76, 78, 79, 80, 81, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 146, 149, 150, 151, 152, 153, 154, 155, 158, 159, 162, 163, 165, 166, 167, 168, 174, 175, 176, 177, 179, 180, 181, 182, 187, 188, 189, 190, 191 and 192.

16. All the facts accepted for judicial notice by the Chamber are in the Annex to this Decision. These facts are in English as there is no official French translation of the list of facts the Prosecution seeks for judicial notice, that appears in the Annex to the Motion.

VI. DISPOSITION

¹⁹ This fact is a repetition of adjudicated facts 75, 76 and 78.

²⁰ The crossed-out passage of this fact listed in the Annex is not admitted.

17. For the foregoing reasons, pursuant to Article 20(1) of the Statute of the Tribunal and Rule 94(B) of the Rules, the Chamber **PARTIALLY GRANTS** the Motion and takes judicial notice of the facts listed in English in the Annex attached to this Decision.

18. The Chamber **DENIES** the Motion in all other respects.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]