



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-03-69-T
Date: 16 September 2010
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 16 September 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON TAKING JUDICIAL NOTICE OF
ADJUDICATED FACTS AND CORRIGENDUM TO THE
CHAMBER'S FIRST, SECOND AND THIRD ADJUDICATED
FACTS DECISIONS**

Office of the Prosecutor

Mr Dermot Groome

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Mihajlo Bakrač
Mr Vladimir Petrović

TRIAL CHAMBER I 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 (“Chamber”);

NOTING the “Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts” filed on 25 November 2009 (“First Adjudicated Facts Decision”) and the “Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts” filed on 28 January 2010 (“Second Adjudicated Facts Decision”);

NOTING the “Decision on the Third Prosecution Motion for Judicial Notice of Adjudicated Facts” filed on 26 July 2010 (“Third Adjudicated Facts Decision”), whereby the Chamber proposed to take, *proprio motu*, judicial notice of eight additional facts – 48a, 48b, 54a, 162a, 211a, 217a, 341a, and 364a, adjudicated in the *Krajišnik* Trial Judgement (“Proposed Facts”) and invited the parties to submit their positions on the issue;¹

NOTING the “Prosecution Submission on the Decision for Judicial Notice of the Adjudicated Facts and Request for Admission of Additional Fact” filed on 13 August 2010 (“Prosecution’s Submission”), whereby the Prosecution did not object to taking judicial notice of the Proposed Facts;²

NOTING that the Prosecution additionally requested taking judicial notice of the following fact adjudicated in the *Krajišnik* Trial Judgement (paragraph 251) to be logically placed between facts 211a and 212 (“Additional Fact”):

Pursuant to the guidelines, the MUP Minister was to pass an act adjusting the internal structure of the Ministry to wartime conditions, and to issue instructions on how members of the MUP were to perform tasks and duties.

thus, if accepted, eliminating the need to add the phrase “Pursuant to the guidelines” at the beginning of fact 212;³

NOTING the “Defence Submission on the Decision on Third Prosecution’s Motion for Judicial Notice of Adjudicated Facts, and Response to Prosecution Request for Admission of Additional Fact” filed on 23 August 2010, whereby the Stanišić Defence did not oppose taking judicial notice of the Proposed Facts and the Additional Fact;

¹ Third Adjudicated Facts Decision, paras 22, 26, 28-29, 34, 49-50, 59, 62, 66.

² Prosecution’s Submission, paras 5, 8, 10, 12, 14, 20, 22, 24-25.

³ Prosecution’s Submission, paras 5, 15-18, 25.

NOTING the “Simatović Defence Submission on the Decision on Third Prosecution’s Motion for Judicial Notice of Adjudicated Facts” filed on 31 August 2010, whereby the Simatović Defence did not raise any objections in relation to the Proposed Facts and the Additional Fact;

FURTHER NOTING that in the Third Adjudicated Facts Decision the Chamber deferred its ruling as to the facts 49, 55, 163, 212, 218, 219, 342 and 365 until such time as it resolved the issue of taking judicial notice of the Proposed Facts;⁴

CONSIDERING that the law applicable to taking judicial notice of adjudicated facts was outlined in the previous decisions of the Chamber;⁵

FINDING that the Proposed Facts and the Additional Fact fulfil all the requirements of Rule 94(B) of the Rules of Procedure and Evidence (“Rules”);

FINDING that, by taking judicial notice of the Proposed Facts as well as the Additional Fact, facts 49, 55, 163, 212, 218, 219, 342 and 365 are now placed within the proper context and fulfil the requirements of Rule 94(B) of the Rules;

CONSIDERING that the Chamber has identified a number of clerical errors in its First, Second and Third Adjudicated Facts Decision which will be corrected in the present decision;

FOR THE FOREGOING REASONS, and PURSUANT TO Rule 94(B) of the Rules, **HEREBY:**

GRANTS the Prosecution’s Submission;

TAKES judicial notice of the following facts:

- 48a - logically placed between facts 48 and 49:

Several factors were seen to support this belief. First, some Bosnian Serbs had memories of crimes committed against Serbs during the Second World War, and of injustices suffered during, and immediately after, World War I. Second, some Bosnian Muslims and Bosnian Croats expressed extreme and aggressive messages, even hinting at the physical annihilation of Serbs in Croatia and Bosnia-Herzegovina. Third, armed gangs perpetrated crimes against Serbs or federal institutions – often viewed as “Serb-dominated” – based on ethnic motives. This type of action fuelled fear and mutual distrust.⁶

- 48b - logically placed between facts 48a and 49:

⁴ Third Adjudicated Facts Decision, paras 34, 62 and 66.

⁵ See e.g. First Adjudicated Facts Decision, paras 26-29, 32, 50, 61-63, 67.

⁶ *Krajišnik* Trial Judgement, para. 43.

Moreover, Bosnian Croats and Bosnian Muslims, supported by their leaders, often did not respond to mobilization for the conflict in Croatia, and this deepened the rift between the national parties.⁷

- 49:

The SDS leadership did not discourage such fears, but rather shared them and made them public, thus exacerbating the mutual distrust among the ethnicities.⁸

- 54a - logically placed between facts 54 and 55:

This led to the creation of the Community of Municipalities of the Bosnian Krajina on 7 April 1991, followed by the associations of Romanija, and Eastern and Old Herzegovina, both formed in May 1991.⁹

- 55:

SDS party leaders justified the associations in terms of economic necessity. However, among the functions the SDS assigned to the Bosnian Krajina community of municipalities was the organization of its defence in times of war or imminent threat of war. When considered together with the arming and mobilization of the Serbian population, this policy shows that the SDS was prepared to oppose even by force the possibility that Bosnia-Herzegovina would become an independent unitary state.¹⁰

- 162a - logically placed between facts 162 and 163:

On 1 June 1992, General Momir Talić of the 1st Krajina Corps ordered his officer Osman Selak to distribute weapons to paramilitary formations that had been trained at Manjača (Banja Luka). On 9 June a report of the 1st Krajina Corps command complained about the slow pace of disarmament of paramilitary formations by civilian authorities. On 18 June, Talić issued an order according to which all paramilitary formations in the Corps' area of responsibility were to be disarmed. This was decided at a meeting of the ARK crisis staff attended by Talić.¹¹

- 163:

Instead of disarming the paramilitaries, the VRS incorporated them into regular forces.¹²

- 211a - logically placed between facts 211 and 212:

In July 1992 Radovan Karadžić issued "Guidelines on tasks, modes of action and functioning of defence forces, state organs, and all economic and social subjects of the Bosnian-Serb Republic in the state of war".¹³

- 211b (the Additional Fact) - logically placed between facts 211a and 212:

⁷ Ibid.

⁸ Ibid.

⁹ *Krajišnik* Trial Judgement, para. 48.

¹⁰ *Krajišnik* Trial Judgement, para. 49. The Chamber notes that footnote 45 of the Third Adjudicated Facts Decision erroneously omits the third sentence of fact 55.

¹¹ *Krajišnik* Trial Judgement, para. 219.

¹² Ibid.

¹³ *Krajišnik* Trial Judgement, para. 251.

Pursuant to the guidelines, the MUP Minister was to pass an act adjusting the internal structure of the Ministry to wartime conditions, and to issue instructions on how members of the MUP were to perform tasks and duties.¹⁴

- 212:

Active and reserve police, as well as special units which would not form part of the MUP's wartime structure, were to be transferred to the Army or used for other wartime tasks.¹⁵

- 217a - logically placed between facts 217 and 218:

The 1974 Constitution provided for collective municipal presidencies.¹⁶

- 218:

A collective presidency was to be formed in time of war or imminent threat of war to replace a municipal assembly, and was to remain in existence until the assembly was able to reconvene.¹⁷

- 219:

This war presidency, consisting of the municipal assembly leadership and some additional members, was accorded extraordinary powers in dealing with situations of war or imminent threat of war.¹⁸

- 341a - logically placed between facts 341 and 342:

From late May 1992 onwards, Muslims were detained in the Dom Kulture building in Čelopek village.¹⁹

- 342:

In early June, a paramilitary group from Serbia assaulted the detainees with spiked metal bars and chains. Some detainees were forced to beat each other.²⁰

- 364a - logically placed between facts 364 and 365:

Some non-Serb police officers and SDA leaders took refuge in the municipality building, where negotiations between the political parties continued.²¹

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ *Krajišnik* Trial Judgement, para. 257.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ *Krajišnik* Trial Judgement, para. 372.

²⁰ Ibid.

²¹ *Krajišnik* Trial Judgement, para. 511.

- 365:

On 19 April, the crisis staff addressed an ultimatum to those inside. The building was surrounded by soldiers of the JNA 6th Krajina Brigade. Those inside the building managed to flee to surrounding villages. Nedjeljko Rašula, as head of the crisis staff, dismissed Muslim and Croat officers from the police force.²²

DECIDES that the following inaccuracies of the First Adjudicated Facts Decision should be corrected:

- The phrase “at least” should be added at the beginning of facts 177, 178, 179 and 180 quoted in footnote 147. Accordingly, this footnote in the relevant part should read:

Consequently, [...] Proffered Fact No. 177 shall read “At least as of July 1995, in addition to ordinary police duties relating to law and order, some members of the regular police force also had duties within special police forces or PJP companies. PJP companies were trained for combat operations and were set up when needed. Members of the PJP Companies generally wore blue camouflage uniforms and were issued standard military weapons”; Proffered Fact No. 178 shall read: “At least as of July 1995, in accordance with the law in effect in the RS, MUP units could be re-subordinated to the VRS for various purposes, including to reinforce the VRS during combat activities. When re-subordinated, the MUP forces followed orders issued by the VRS”; Proffered Fact No. 179 shall read: “At least as of July 1995, the commander of the VRS unit to which the MUP unit was re-subordinated and the commander of the MUP unit coordinated their work in carrying out the tasks assigned by the VRS”; and Proffered Fact No. 180 shall read: “At least as of July 1995, MUP forces were engaged in combat operations for a specific time to carry out a precisely described task. During their re-subordination, MUP forces retained their formation and could not be disintegrated or separated”.

DECIDES that the following inaccuracy of the Second Adjudicated Facts Decision should be corrected:

- Fact 156 as cited in footnote 115 should not include the phrase “the evidence shows that”. Accordingly, this footnote should read:

Proffered Fact No. 156 shall read: “Paramilitary units, often referred to simply as ‘Chetniks’, were present in Škabrnja and wore various kinds of JNA uniforms, some with an insignia with four Cyrillic ‘S’, and different kinds of hats, including berets, fur hats with cockades and hats. Their faces were painted, however, at least some of them appeared to be local”.

DECIDES that the following inaccuracies of the Third Adjudicated Facts Decision should be corrected:

- Fact 77 should start with “At that founding session” instead of “At the founding session” as cited in footnote 75. Accordingly, this footnote should read:

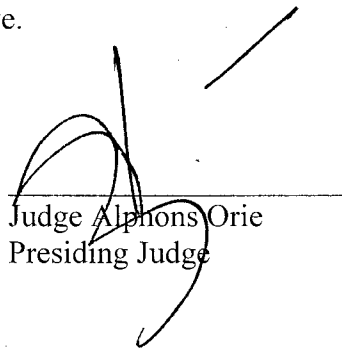
Accordingly, Proffered Fact No. 77 shall read: “At that founding session, Bosnian-Serb deputies passed a resolution that “the Serbian people of Bosnia-Herzegovina shall stay in the joint state of Yugoslavia together with Serbia, Montenegro, SAO Krajina, SAO Slavonija, Baranja, Western

²² Ibid.

Sirmium [Zapadni Srem], and others who may declare that they wished to stay,” subject to confirmation by a plebiscite.”

- The last sentence of paragraph 61 and footnote 92 should refer to fact 337 instead of 327. Paragraph 66 should be read accordingly by excluding fact 337 from its subparagraph (1) and including it in subparagraph (2).

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



Judge Alphons Orié
Presiding Judge

Dated this sixteenth day of September 2010.
At The Hague
The Netherlands

[Seal of the Tribunal]