

UNITED  
NATIONS



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 February 2012  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 16 February 2012

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

**DECISION ON STANIŠIĆ DEFENCE MOTION FOR JUDICIAL  
NOTICE OF ADJUDICATED FACTS**

**Office of the Prosecutor**  
Mr Dermot Groome

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Mr Wayne Jordash  
Mr Scott Martin

**Counsel for Franko Simatović**  
Mr Mihajlo Bakrač  
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## I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 29 September 2011, the Stanišić Defence filed a motion requesting the Chamber to take judicial notice of certain adjudicated facts (“Motion”).<sup>1</sup> On 12 October 2011, the Prosecution filed a response (“Response”).<sup>2</sup>
2. The Stanišić Defence requests that the Chamber take judicial notice of 82 proposed adjudicated facts (“Proposed Facts” which are divided into “Bosnia Facts” and “SAO Krajina Facts”)<sup>3</sup> from the Trial and Appeals Chambers judgments in the cases of *Prosecutor v. Krajišnik*,<sup>4</sup> *Prosecutor v. Martić*,<sup>5</sup> *Prosecutor v. Simić et al.*,<sup>6</sup> and *Prosecutor v. Gotovina et al.*<sup>7</sup> The Defence submits that taking judicial notice of adjudicated facts pursuant to Rule 94 (B) of the Rules on Procedure and Evidence (“Rules”) will enable the Chamber to achieve greater judicial economy and enable it to devote a greater proportion of trial time to the core issues of the case.<sup>8</sup>
3. The Prosecution submits a general objection that the Defence seeks judicial notice of large portions of the relevant judgements instead of individual facts.<sup>9</sup> The Prosecution further submits that judicial notice of adjudicated facts should not be used to circumvent the Rules on admission of evidence or to seek admission of evidence already admitted in the current case.<sup>10</sup> Any additional arguments by the Prosecution will be dealt with in the discussion part of this decision. The Prosecution does not object to judicial notice of a number of Proposed Facts.<sup>11</sup> The Simatović Defence did not respond to the Motion.

<sup>1</sup> Stanišić Defence Motion for Judicial Notice of Adjudicated Facts, 29 September 2011.

<sup>2</sup> Response to Defence Motion for Judicial Notice of Adjudicated Facts, 12 October 2011. Due to a clerical error in the response, the Prosecution filed a corrigendum on 14 October 2011 (Corrigendum to Response to Defence Motion for Judicial Notice of Adjudicated Facts, 14 October 2011).

<sup>3</sup> Motion, paras 1-2, Annex A.

<sup>4</sup> *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Judgment, 17 March 2009; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Judgment, 27 September 2006 (“*Krajišnik* Trial Judgment”).

<sup>5</sup> *Prosecutor v. Martić*, Case No. IT-95-11-A, Judgment, 8 October 2008; *Prosecutor v. Martić*, Case No. IT-95-11-T, Judgment, 12 June 2007.

<sup>6</sup> *Prosecutor v. Simić et al.*, Case No. IT-95-9-A, Judgment, 28 November 2006; *Prosecutor v. Simić et al.*, Case No. IT-95-9-T, Judgment, 17 October 2003.

<sup>7</sup> *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Judgment, 15 April 2011 (“*Gotovina et al.* Trial Judgment”).

<sup>8</sup> Motion, para. 6.

<sup>9</sup> Response, para. 6; applies to Bosnia Facts Nos 1, 3-18, 20-21, 23-33, 36-37, 39-48, 50-52, and 54 and SAO Krajina Facts Nos 2-8, 10-11, and 26-27.

<sup>10</sup> Response, paras 4, 7; applies to Bosnia Facts Nos 1, 3, 18, 20-21, 24, 28, 36-37, 39-41, 43-46, 48, 51, and 54.

<sup>11</sup> The Prosecution does not oppose the judicial notice of Bosnia Facts Nos 2, 19, 22, 34-35, 38, 49, and 53 and SAO Krajina Facts Nos 1, 9, 12-23, and 25.

## II. APPLICABLE LAW

### 4. Rule 94 (B) of the Rules provides 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 of the authenticity of documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings.

5. Under this Rule, the Chamber retains full discretion to determine which adjudicated facts to recognize following a careful consideration of the accused's rights to a fair and expeditious trial.<sup>12</sup> In this respect, a balance must be achieved between the purpose of taking judicial notice, namely to promote judicial economy, and the fundamental right of the accused to a fair trial.<sup>13</sup> The principles guiding and limiting the Chamber in its discretion have been developed through the jurisprudence of the Tribunal.<sup>14</sup> In the exercise of its discretion, the Chamber will consider whether a proposed adjudicated fact meets the following requirements:

- (i) The fact must be distinct, concrete and identifiable<sup>15</sup> and the judicial notice must not be used as a mechanism to circumvent the general Rules governing the admissibility of evidence;<sup>16</sup>
- (ii) It must be relevant to the matters at issue in the current proceedings;<sup>17</sup>
- (iii) It must not include findings or characterizations that are of an *essentially* legal nature;<sup>18</sup>
- (iv) It must not be based on a plea agreement or on facts voluntarily admitted in a previous case;<sup>19</sup>

<sup>12</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 ("Karemera et al. Appeal Decision"), para. 41.

<sup>13</sup> *Karemera et al.* Appeal Decision, para. 39.

<sup>14</sup> *Karemera et al.* Appeal Decision, para. 41.

<sup>15</sup> *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 ("Popović et al. Decision"), para. 6; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts of 14 and 23 June 2006, 7 September 2006 ("Prlić et al. Decision"), para. 18; *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 ("Krajišnik Decision of 24 March 2005"), para. 14; *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 for Witnesses Pursuant to Rule 92bis, 28 February 2003 ("Krajišnik Decision of 28 February 2003"), para. 15.

<sup>16</sup> *Prosecutor v. Nikolić*, Case No. IT-02-60/1-A, Decision on Appellant's Motion for Judicial Notice, 1 April 2005, ("Nikolić Appeal Decision"), para. 17.

<sup>17</sup> *Nikolić* Appeal Decision, paras 11, 48, 56; *Niyitegeka v. The Prosecutor*, Case No. 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.

<sup>18</sup> *Prosecutor v. 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 ("Dragomir Milošević Appeal Decision"), para. 22.

- (v) It must not have been contested on appeal, or, if it has, the fact has been settled on appeal;<sup>20</sup>
- (vi) It must not relate to the acts, conduct or mental state of the accused.<sup>21</sup> The exclusion of Proposed Facts relating to the acts, conduct or mental state of the accused does not apply to the conduct of other persons for whose criminal acts and omissions the accused is allegedly responsible through one or more of the forms of responsibility enumerated in the Statute;<sup>22</sup>
- (vii) The formulation of the proposed fact must not be misleading or inconsistent with the facts actually adjudicated in the original judgement.<sup>23</sup>

### III. DISCUSSION

#### A. General considerations

6. In its discussion below, the Chamber will explicitly deal only with those Proposed Facts to which the Prosecution has raised an objection or which are problematic in the Chamber's view. In instances where the Chamber is satisfied that only a portion of a Proposed Fact meets the requirements for taking judicial notice, it will take judicial notice of that particular portion only. An annex to this decision contains a list of adjudicated facts reformulated or redacted by the Chamber.

7. When the Chamber takes judicial notice of a Proposed Fact referring to a document in which a certain issue was reported or stated, the Chamber does not take judicial notice of the veracity of the facts stated in the document. The Chamber merely takes judicial notice of the fact that a certain issue was reported or stated in the document. This can be illustrated by SAO Krajina Fact No. 5, which states the following:

On 20 April 1993, the RSK Supreme Defence Council was established, which was composed of the President of the RSK, the Prime Minister, the Minister of Defence, the Minister of Interior, and the Commander of the SVK. The president of the RSK "[led] the [SVK] in times of peace and war, in accordance with the [RSK] Constitution and decisions adopted by the Supreme Defence Council, and [presided] over the Supreme Defence Council". The Supreme Defence Council was mandated to "adopt decisions on the readiness, mobilisation and deployment of the [SVK] and on other matters in accordance with the Constitution and the law".

<sup>19</sup> *Popović et al.* Decision, para. 11; *Prlić et al.* Decision, para. 18; *Krajišnik* Decision of 24 March 2005, para. 14; *Krajišnik* Decision of 28 February 2003, para. 15.

<sup>20</sup> *Prosecutor v. Kupreškić et al.*, 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; *Krajišnik* Decision of 28 February 2003, paras 14-15.

<sup>21</sup> *Dragomir Milošević* Appeal Decision, para. 16; *Karemera et al.* Appeal Decision, paras 50-53.

<sup>22</sup> *Karemera et al.* Appeal Decision, para. 52.

<sup>23</sup> *Karemera et al.* Appeal Decision, para. 55.

It is clear from the *Martić* Trial Judgment that the quotations in the second part of this Proposed Fact originate from the RSK Constitution and the Chamber will, therefore, reformulate the Proposed Fact accordingly. The Chamber takes judicial notice of the fact that the RSK Constitution contains such statements. The same applies for Bosnia Facts Nos 20-21 and 24.

8. Similarly, with regard to Proposed Facts indicating that a person or an entity said something, the Chamber takes judicial notice of the fact that this person or entity made such a statement and not of the veracity of its content. For example, Bosnia Fact No. 36 states the following:

Calls to take over territories and create a Serb-dominated state in Bosnia-Herzegovina became strong and distinct in the Bosnian-Serb Assembly beginning in January 1992. At the Assembly session of 26 January 1992, a member of the Ministerial Council, Jovan Čizmović, addressed Krajišnik as Assembly President: "Taking the constitutional and legal status of the peoples as a starting point, it is both politically and legally correct to allow all peoples to create their own sovereign and independent states on the basis of the right of each people to self-determination and an absolute respect of the will of all other peoples, and not on the basis of a unilateral act and by the use of force. To solve this problem, I propose that we begin with an urgent operationalization and a declaration on the establishment and promulgation of the Serbian Republic of Bosnia and Herzegovina. Tasks set out in the instructions of 19 December 1991 should be carried out".

This Proposed Fact clarifies that Jovan Čizmović made this statement during an Assembly session of 26 January 1992. In this case, the Chamber takes judicial notice of the fact that Jovan Čizmović made this statement. The same applies for Bosnia Fact No. 10, 36-37, and 40-41, but in addition Bosnia Facts Nos 21 and 40-41 also have to be reformulated by the Chamber. Based on these considerations, Bosnia Facts Nos 21 and 40-41 and SAO Krajina Fact No. 5 will be reformulated by the Chamber (see Annex).

9. The Chamber notes that Bosnia Fact No. 18 originating in the *Krajišnik* Trial Judgment is based on an SDS main office letter to the Prosecution dated 5 November 2001, admitted as exhibit in that case. Bosnia Fact No. 18 refers to a post-war document that the *Krajišnik* Trial Chamber addressed in the Trial Judgment together with other evidence presented before it. The Trial Chamber clearly distanced itself from the information provided in this document. Considering this and the Chamber's approach to Proposed Facts referring to documents, entities, or persons reporting or stating something, in its discretion, the Chamber decides not to take judicial notice of Bosnia Fact No. 18.

#### **B. The Proposed Fact Must be Distinct, Concrete, and Identifiable**

10. It is often difficult to ascertain whether a Trial Chamber makes a finding of fact, or whether it merely restates evidence presented before it. Judgments may contain sections in which evidence given by one or more witnesses is recalled by the Trial Chamber, but this evidence may or may not then be accepted by the Trial Chamber in reaching its determinations. Therefore, the Chamber will

cautiously consider on a case by case basis, and in the context of the judgment as a whole, whether the Trial Chamber in question accepted evidence presented before it and made its findings accordingly. Only such findings constitute adjudicated facts within the meaning of Rule 94 (B) of the Rules.<sup>24</sup>

11. Based on these considerations, the Chamber finds that Bosnia Fact No. 1 reflects a discussion of the evidence presented in the *Simić* trial, although not the Trial Chamber's view. Bosnia Fact No. 3 does not reflect the *Krajišnik* Trial Chamber's views but that of the accused as a witness in that case and cannot, therefore, be considered as an adjudicated fact. With regard to Bosnia Fact No. 43, the Chamber finds that it contains recitations from a witness's testimony in the *Krajišnik* case, which the Trial Chamber in that case did not adopt as a finding. This is also clear from the following paragraph in the original judgment which contains a recitation of another witness's testimony on the same topic but differing in certain respects. It is for the Stanišić Defence to demonstrate that the relevant paragraph in the original trial judgment is the Trial Chamber's finding. This has not been done and the Chamber will, therefore, not take judicial notice of this Proposed Fact. Finally, Bosnia fact No. 51 does not contain a fact, but only the *Krajišnik* Trial Chamber's reasoning.

12. Bosnia Facts Nos 11-17 and 28-33 contain quotations, paraphrasing, and discussions of documents that have been admitted as exhibits in the present case. There was no challenge as to the authenticity of these documents and the Chamber found that they had probative value and admitted them into evidence. Under these circumstances, there is no discernible difference between the exhibited documents and taking judicial notice of what is stated in them. Therefore, the Chamber has decided not to take judicial notice of them.

13. Bosnia Facts Nos 7 and 9 contain sentences which are not the original Trial Chamber's findings and these Proposed Facts will, therefore, be reformulated in order to satisfy the current criterion. The Chamber further finds that Bosnia Fact No. 50 reflects, in part, the substance of the Bosnian-Serb Assembly session of 12 May 1992, admitted as exhibit P1132. Considering that the authenticity of the document was not challenged and in accordance with the Chamber's approach above, the Chamber will reformulate it and take judicial notice only of the part that satisfies the current criterion. With regard to a part of SAO Krajina Fact No. 7, the Stanišić Defence has not demonstrated that the relevant Trial Chamber actually adopted the evidence presented before it as a finding and the Chamber will, therefore, redact this part of the Proposed Fact (see Annex). SAO

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<sup>24</sup> See *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Decision Partially Granting Motion of Mićo Stanišić for Judicial Notice of Adjudicated Facts, 29 June 2011, para. 5.

Krajina Fact No. 8 contains a discussion of evidence and will be reformulated by the Chamber (see Annex).

14. Although Bosnia Facts Nos 45-46 and 48 contain quotations and paraphrasing from documents already in evidence in the present case, they also contain additional information and the original judgments demonstrate that the relevant Trial Chamber adopted the evidence as findings. These Proposed Facts will, therefore, be reformulated to cover only those findings. With regard to Bosnia Fact No. 25 the Chamber understands the phrasing "it is apparent to the Chamber" to mean the same as "the Chamber finds". Therefore, the Chamber is satisfied that Bosnia Fact No. 25 is the relevant Trial Chamber's finding.

15. In conclusion, Bosnia Facts Nos 1, 3, 11-17, 28-33, 43, and 51 do not contain any findings of fact by the relevant Trial Chambers and the Chamber will, therefore, not take judicial notice of them. Bosnia Facts Nos 7, 9, 45-46, 48, and 50 and SAO Krajina Facts Nos 7-8 also contain portions which are not the relevant Trial Chambers' findings of fact. However, rather than rejecting these Proposed Facts, the Chamber considers it appropriate to reformulate and redact them so that they only contain such findings.

16. The Chamber considers that Bosnia Facts Nos 42 and 52-54 contain subjective inferences and assessments which cannot be considered to be of a factual nature.<sup>25</sup> The Chamber has, therefore, reformulated and redacted the Proposed Facts accordingly (see Annex).

17. The Chamber further considers that Bosnia Facts Nos 2, 39, and 44 and SAO Krajina Facts Nos 3-4, 10, 14, 16, and 26-27 are not clear, distinct, and identifiable in their present form. Instead of rejecting these Proposed Facts in their entirety, the Chamber will make the necessary modifications to the Proposed Facts so that they satisfy the current requirement (see Annex). For Bosnia Fact No. 2, the Chamber is unable to introduce the appropriate modifications and will, therefore, not take judicial notice of this Proposed Fact.

18. The majority of the Proposed Facts consist of large portions of paragraphs from the relevant trial judgments, such as Bosnia Fact No. 23. With regard to these Proposed Facts, the Chamber has carefully examined each individual fact contained in a Proposed Fact and would only take judicial notice of it if all of the individual facts are distinct, concrete, and identifiable.

19. In conclusion, the Chamber finds that Bosnia Facts Nos 1-3, 11-17, 28-33, 43, and 51 do not satisfy the criterion of being distinct, concrete, and identifiable and will, therefore, not be

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<sup>25</sup> See *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision granting in part Prosecution's Motions for Judicial Notice of Adjudicated Facts, 1 April 2010, para. 47.

further considered. Bosnia Facts Nos 7, 9, 25, 39, 42, 44, 50, and 52-54<sup>26</sup> and SAO Krajina Facts Nos 3-4, 7-8, 10, 14, 16, and 26-27 are distinct, concrete, and identifiable subject to the modifications indicated in the present decision (see Annex). The remaining Proposed Facts satisfy the current criterion in their present form.

**C. The Proposed Fact Must be Relevant to the Case**

20. The Defence submits that all the Proposed Facts are relevant to the current proceedings.<sup>27</sup> The Prosecution does not challenge any of the Proposed Facts on this ground. The Chamber finds that all Proposed Facts which satisfy the other requirements for taking judicial notice are relevant to the present case.

**D. The Proposed Fact Must not Contain any Findings or Characterizations that are of an Essentially Legal nature**

21. The Defence submits that the Proposed Facts, while closely associated with accompanying legal findings, are of an essentially factual nature.<sup>28</sup> The Prosecution does not challenge any of the Proposed Facts on this ground. The Chamber finds that none of the Proposed Facts which satisfy the preceding requirements contain findings or characterizations that are of an essentially legal nature, except for Bosnia Facts Nos 53 and 55 and SAO Krajina Fact No. 27, which contain impermissible reference to legal findings. Bosnia Facts Nos 53 and 55 will not be further considered and SAO Krajina Fact No. 27 will be reformulated by the Chamber so that it contains only factual findings (see Annex).

**D. The Proposed Fact Must not be Based on an Agreement Between the Parties to the Original Proceedings**

22. The Defence submits that all the Proposed Facts meet this requirement.<sup>29</sup> The Prosecution does not challenge any of the Proposed Facts on this ground. The Chamber finds that none of the Proposed Facts are based on an agreement between the parties to the original proceedings.

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<sup>26</sup> The Chamber has not proposed modifications to Bosnia Fact No. 53 as it does not satisfy the criteria discussed in paragraph 20 of this decision.

<sup>27</sup> Motion, para. 7.

<sup>28</sup> Motion, para. 12.

<sup>29</sup> Motion, para. 13.



**E. The Proposed Fact Must not have been Contested on Appeal, or, if it has, the Fact has been Settled on Appeal**

23. The Defence alleges that all the Proposed Facts originate from appellate judgements rendered in the relevant proceedings, except for the *Gotovina et al.* Trial Judgement.<sup>30</sup> In the case of the appellate judgements, the Proposed Facts have not been contested or have been upheld by the Appeals Chamber.<sup>31</sup> The Proposed Facts from the *Gotovina et al.* Trial Judgement have not been appealed.<sup>32</sup> The Prosecution does not challenge any of the Proposed Facts on this ground, but it points out the possibility that the Appeals Chamber in the *Gotovina and Markač* case may, of its own accord, bring into question SAO Krajina Facts Nos 14 and 26, as these relate to the accused's grounds of appeal.<sup>33</sup> The Chamber finds that none of the Proposed Facts were contested on appeal.

**F. The Proposed Fact Must not Relate to Acts, Conduct, or Mental State of the Accused**

24. The Defence argues that the Proposed Facts do not relate to acts and conduct of the Accused Stanišić, who is not mentioned in them.<sup>34</sup> The Prosecution does not challenge any of the Proposed Facts on this ground. The Chamber is satisfied that none of the Proposed Facts relate to acts, conduct, or mental state of either Accused.

**G. The Formulation of a Proposed Fact Must not be Misleading or Inconsistent with the Facts Actually Adjudicated in the Original Judgement**

25. The Defence submits that the majority of the Proposed Facts are precise replications from the relevant judgements.<sup>35</sup> Where they are not, the Proposed Facts have been modified only in order for them to be understood outside the context of the original judgement.<sup>36</sup> The Defence further states that the Proposed Facts are identified with adequate precision, accompanied by a paragraph reference to the relevant judgements.<sup>37</sup> Based on this criterion, the Prosecution challenges the following Proposed Facts: Bosnia Facts Nos 35, 50, and 52 and SAO Krajina Fact No. 24. Bosnia Facts Nos 50 and 52 have been reformulated by the Chamber so that the Prosecution's concerns have been indirectly addressed and can, therefore, be disregarded here. SAO Krajina Fact No. 24 is misleading in that it does not accurately reflect the text of the original judgment. The Chamber has,

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<sup>30</sup> Motion, para. 15.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Response, para. 11.

<sup>34</sup> Motion, para. 14.

<sup>35</sup> Motion, para. 9.

<sup>36</sup> Ibid.

<sup>37</sup> Motion, para. 11.

therefore, reformulated this Proposed Fact. The Chamber finds that Bosnia Fact No. 35 does not substantially differ from its formulation in the original judgement.

#### IV. DISPOSITION

26. Based on the reasoning set forth above and pursuant to Rules 54 and 94 (B) of the Rules, the Chamber:

**GRANTS** the Motion in part and takes judicial notice of the following Proposed Facts:

1) Bosnia Facts Nos 4-6, 8, 10, 19-20, 22-24, 26-27, 34-38, and 45-49 and SAO Krajina Facts Nos 1-2, 6, 9-15, 17-23, and 25;

2) Bosnia Facts Nos 7, 9, 21, 25, 39-42, 44, 50, 52, and 54 and SAO Krajina Facts Nos 3-5, 7-8, 16, 24, and 26-27 subject to the changes indicated in the present decision (see also Annex);

**DISMISSES** the remainder of the Motion.

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



Judge Alphons Orie  
Presiding Judge

Dated this Sixteenth of February 2012  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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**ANNEX TO DECISION ON STANIŠIĆ DEFENCE MOTION  
FOR JUDICIAL NOTICE OF ADJUDICATED FACTS**

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Table of the Adjudicated Facts Modified by the Chamber

The Proposed Fact	The Modified Adjudicated Fact
Bosnia Fact No. 7	On 26 October 1991, all SDS presidents of the municipalities in the ARK as well as ARK government met with Radovan Karadžić. During this meeting an order was presented and "fully accepted" by those present. The order consisted of fourteen points and called for, among other things, a "town command" amounting to a military administration; intensified mobilization of the TO; formation of military units; subordination of the TO to the JNA; disbanding of paramilitary units and their reassignment to the TO; take-over of public enterprises, the post office, banks, judiciary, media, and the SDK (Social Accounting Service); coordination with local directors and with the SDS in Sarajevo to ensure supplies for the population; and imposition of war taxes. The order was sent by telex on 29 October 1991 to presidents of all municipalities in the ARK by Radoslav Brđanin, in his capacity as "coordinator for implementing decisions".
Bosnia Fact No. 9	On 21 November 1991 the Bosnian-Serb Assembly proclaimed as part of the territory of federal Yugoslavia all those municipalities, communes, and settlements where a majority of registered citizens of Serb nationality had voted in favour of remaining in Yugoslavia. If the majority in one municipality had voted to remain within Yugoslavia, the whole of that municipality would remain. In municipalities where the majority of people had not participated in the plebiscite, the SDS proposed to look at single communes or settlements: if local communities had voted to remain, then only that community would be considered part of Yugoslavia, while the rest of the territory of the municipality would be allowed to join an independent Bosnia-Herzegovina.
Bosnia Fact No. 21	By 23 February 1992, representatives of the SDS (among them Karadžić and Krajišnik) and of the other two national groups had agreed on a statement of principles for a new constitutional arrangement for Bosnia-Herzegovina. According to this statement, the territory of Bosnia-Herzegovina would keep its external borders. It would become an independent state made up of three constituent units which would group municipalities according to the nationality principle based on the last three censuses (1971, 1981, 1991). Freedom of movement would be allowed only within each unit, while resettlement from one unit to another would be subject to a "special permit".
Bosnia Fact No. 25	On 24 March 1992, the Bosnian-Serb Assembly also issued a decision verifying the proclamation of various Serb municipalities. From April 1992, Bosnian Serbs implemented the take-over of municipalities. By this time, the Bosnian-Serb leadership was increasingly losing its confidence in diplomatic efforts, into which Krajišnik and the other negotiators had invested so much of their political capital.
Bosnia Fact No. 39	A refrain of the Bosnian-Serb leadership was that Bosnian Serbs had a claim to at least 65 per cent of the land, even though they represented only 35 per cent of the population of Bosnia-Herzegovina. Radovan Karadžić told Slobodan Milošević about the 65 per cent claim on 24 October 1991. On 11 April 1992, Karadžić, Nikola Koljević and Krajišnik met at a hotel in Ilidža. They discussed a map of territory which the SDS wanted to place under Serb control. It corresponded to approximately 70 per cent of Bosnia-Herzegovina, and included a part of Sarajevo.
Bosnia Fact No. 40	By 18 March 1992, the Bosnian-Serb leadership did not have a regular armed force under its exclusive command. Miroslav Vještica summarized the situation as of that date: "we must urgently establish a Serbian MUP in the Republic of Serbian Bosnia and Herzegovina, we must establish national defence, our Serbian army, which is

	already there on the ground, we just need to transform it into what we need to have". The "Serbian army" already there, on the ground was, at that point, the JNA and the non-enlisted Bosnian-Serb men of fighting age.
Bosnia Fact No. 41	By the time General Mladić detailed his ideas about a new Bosnian-Serb army before the Assembly on 12 May 1992, the utility of an armed population had already been proven: "We are not starting from scratch. That is very important. Our starting point are the armed Serbian people in the Republika Srpska of Bosnia and Herzegovina, who have, in the course of the war so far, responded, insofar as they did, to the call to put a stop... to the fascist and phantom Ustasha dragon. And so far, we have saved this people from being totally wiped out". In 1995, Karadžić said: "Distribution of weapons was carried out thanks to the JNA. What could be withdrawn was withdrawn and distributed to the people in the Serbian areas, but it was the SDS which organised the people and created the army".
Bosnia Fact No. 42	Elements of a Bosnian-Serb police force were already in place by March 1992. The Assembly promptly set up the Bosnian-Serb MUP, passing a Law on Internal Affairs on 27 March 1992, and handing the ministerial post to Mićo Stanišić. He, on 31 March 1992, distributed a press release announcing the formation of five CSBs, one for each of the self-proclaimed and territorially vaguely defined Bosnian-Serb SAOs (Krajina, Herzegovina, Northern Bosnia, Romanija-Birač, and Semberija), and ordered the affected police officers to sever their ties with the old republic and swear an oath of allegiance to the new state.
Bosnia Fact No. 44	Around May 1992, Mićo Stanišić told Milorad Davidović, a Serb from Bijelina who worked for the Federal SUP, that Arkan's forces in Bijelina and Zvornik had his approval to be there and were helping to "liberate" territory that the Bosnian Serbs believed should be part of the Bosnian-Serb Republic. Stanišić also spoke of an agreement that Arkan's forces could do as they wished with any property in the "liberated" territories.
Bosnia Fact No. 50	The VRS had a plan of action broadly formulated by the political leadership. Neither Karadžić nor Krajišnik found it necessary to become involved in the affairs of the VRS on a daily basis. This was done by their trusted commander Ratko Mladić, whom Karadžić and Krajišnik had selected for the job. General Mladić was guided by the strategic goals articulated by Karadžić and Krajišnik at the Bosnian-Serb Assembly session of 12 May 1992.
Bosnia Fact No. 52	Take-overs, killings, detention, abuse, expulsions, and appropriation and destruction of property had begun in the territories claimed by the Bosnian Serbs well before the pronouncement of the strategic goals on 12 May 1992. These incidents were launched in early April 1992, and were repeated throughout the claimed territories in the months to come.
Bosnia Fact No. 54	At a Vogošća municipal assembly meeting, on 14 November 1992, where Krajišnik was a guest of honour, he joked: "There are no Muslims around so one should look for an Albanian in order to prevent that Serbs quarrel with each other". In an interview from late November 1992, he took credit for rescuing his people from slaughter and genocide. On another occasion around this time he sounded wistful about the Bosnian Serbs' slow progress in achieving control over Sarajevo: "Sarajevo is a separate problem. At the moment... the area of the city proper is marked as Muslim territory, but we shall plead for demilitarisation and division between the two national communities".
SAO Krajina Fact No. 3	The RSK was not demilitarised in its entirety in accordance with the Vance Plan. On 28 April 1992, Special Police ("PJM") Brigades and a PJM Administration were established within the RSK Ministry of Defence by the SSNO of Serbia. General Borislav Đukić, a JNA officer, was appointed Chief of the PJM Administration. The PJM Brigades wore blue uniforms and used the side arms and

	the equipment of the TO. On 18 May 1992, the SVK was established.
SAO Krajina Fact No. 4	The RSK leadership was against the demilitarisation of the RSK, asserting it would be unable to defend itself in the event of Croatian attacks. The Vance Plan was interpreted by the RSK authorities to mean that UNPROFOR was to protect the population in the areas of deployment. Croatian forces carried out several armed incursions into the UNPA between 1992 and 1995, including on the Miljevac plateau on 21 June 1992, Maslenica on 22 January 1993, Medak pocket on 9 and 12 September 1993, and Operation Flash from 1 May 1995.
SAO Krajina Fact No. 5	On 20 April 1993, the RSK Supreme Defence Council was established, which was composed of the President of the RSK, the Prime Minister, the Minister of Defence, the Minister of Interior, and the Commander of the SVK. According to the RSK Constitution, the President of the RSK leads the SVK in times of peace and war, in accordance with the Constitution and decisions adopted by the Supreme Defence Council, and presides over the Supreme Defence Council. The Supreme Defence Council is mandated to adopt decisions on the readiness, mobilisation and deployment of the SVK and on other matters in accordance with the Constitution and the law.
SAO Krajina Fact No. 7	On 19 February 1992, Milan Martić ordered the disbandment of an RSK MUP Special Purpose unit commanded by Predrag Baklajić due to information that this unit has been involved in criminal activities, including several murders, and incidents of robbery, theft and destruction. This disbandment was ultimately not carried through and the unit continued with criminal activities in 1992. On 1 April 1993, Milan Martić requested the MUP of Serbia to provide 20-30 inspectors to deal with homicides and property offences which were "rapidly increasing recently in the RSK". On 7 September 1993, Milan Martić ordered the arrest of members of certain paramilitary groups, who were suspected of committing organised crimes.
SAO Krajina Fact No. 8	After the attack on Struga, Captain Dragan Vasiljković arrested ten members of the TO in Dvor, who were allegedly responsible for killing several civilians. Subsequently, Milan Martić arrived in Dvor and ordered Captain Dragan Vasiljković to release the ten men, which he did.
SAO Krajina Fact No. 16	All but around ten of the villagers left Kakanj on 4 and 5 August 1995. An overwhelming majority, in not all of the persons who left Kakanj village on these days, were Krajina Serbs.
SAO Krajina Fact No. 24	On 4 or 5 August 1995, the majority of inhabitants left Uzdolje.
SAO Krajina Fact No. 26	Between 4 and 7 August 1995 columns of people travelled through Donji Lapac municipality and crossed the border to Bosnia-Herzegovina. Approximately 50,000-70,000 persons travelled in these columns through Donji Lapac municipality and to Bosnia-Herzegovina. These persons came from several municipalities including Knin, Gračac, and Korenica.
SAO Krajina Fact No. 27	There were at least 15,000 civilians in Knin on 4 August 1995, the vast majority of whom were women, children, and elderly men, and approximately 14,000 of whom left on 4 and 5 August 1995. Similarly, there was a civilian presence and only a minimal SVK presence in towns of Benkovac, Gračac, and Obrovac on 4 August 1995. Based on these conclusions, the vast majority, if not all, of the persons who left Benkovac, Gračac, Knin, and Obrovac on 4 and 5 August 1995 were civilians or at least persons placed <i>hors de combat</i> at that time.