

IT-03-69-T
D 42563 - D 42559
10 July 2012

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**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: 10 July 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 10 July 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

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

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 1 June 2012, the Stanišić Defence (“Defence”) filed a motion requesting that the Chamber take judicial notice of four adjudicated facts (“Proposed Facts”), three originating from the Trial Chamber judgement in the case of *Prosecutor v. Milan Lukić and Sredoje Lukić* (“Lukić Judgement”) and one from the Trial Chamber judgement in the case of *Prosecutor v. Mile Mrkšić et al.* (“Motion”).¹ The Defence submits that the Proposed Facts meet the requirements for judicial notice pursuant to Rule 94 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).²

2. On 15 June 2012, the Prosecution responded, opposing judicial notice of the four Proposed Facts (“Response”).³ As a general objection, the Prosecution submits that the purpose of taking judicial notice of adjudicated facts, namely to promote judicial economy, no longer exists due to the concluding stage of the proceedings.⁴ It submits that it is not in the interests of justice for the Chamber to judicially notice the Proposed Facts because, at this stage of the proceedings, the parties are deprived of the opportunity to further contextualise or contest the Proposed Facts through witnesses, and the Chamber has already received evidence related to the subject matter of the Proposed Facts.⁵ In relation to Proposed Facts Nos 2 and 4, should the Chamber take judicial notice of them, the Prosecution requests that it also judicially notice additional portions of the paragraph from where each of these Proposed Facts originates.⁶ The Prosecution’s specific objections to the Proposed Facts will be dealt with further in the discussion part of this decision.

3. The Simatović Defence did not respond to the Motion.

II. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing requests for judicial notice of adjudicated facts pursuant to Rule 94 of the Rules as set out in a prior decision.⁷

¹ Second Stanišić Defence Motion for Judicial Notice of Adjudicated Facts, 1 June 2012 (Public with Public Annex A), paras 1, 16, Annex A. See *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1, Judgement, 20 July 2009 and *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1, Judgement, 27 September 2007. The Chamber notes that the Defence asserts that one of the Proposed Facts was adjudicated in the Appeals Chamber judgement in the *Mrkšić* case. See Motion, para. 1. However, the Proposed Fact at issue originates from the Trial Chamber judgement. See Annex A.

² Motion, paras 7-16.

³ Prosecution Response to Second Stanišić Defence Motion for Judicial Notice of Adjudicated Facts, 15 June 2012, paras 1, 15, 34.

⁴ Response, paras 13-14.

⁵ Response, paras 14-15.

⁶ Response, paras 1, 23, 32, 34.

⁷ Decision on Stanišić Defence Motion for Judicial Notice of Adjudicated Facts, 16 February 2012 (“Decision of 16 February 2012”), paras 4-5.

III. DISCUSSION

5. In relation to the Prosecution's general objections, the Chamber finds that, despite the late stage of the proceedings, the Prosecution will still have the opportunity to respond to any judicially noticed facts in the rebuttal phase of the trial, in the event that the Chamber decides to take judicial notice of them.

A. The Proposed Fact Must be Distinct, Concrete, and Identifiable

6. The Chamber recalls and refers to its discussion in relation to the distinction between a Trial Chamber making a finding of fact and restating evidence presented before it.⁸ The Chamber finds that Proposed Fact No. 1 represents a discussion and evaluation of the evidence presented before the relevant Trial Chamber, not a factual finding. In this respect, the Chamber notes that the Trial Chamber stated that "there has been no convincing evidence presented to the Trial Chamber [...]"⁹ The Chamber does not consider this to be a factual finding, but rather an evaluation of the evidence presented before that Trial Chamber, evidence to which this Chamber is not privy. Additionally, the Chamber finds that the second sentence of Proposed Fact No. 3 and the first sentence of Proposed Fact No. 4 also represent a discussion of evidence as opposed to being factual findings of the relevant Trial Chamber. The Chamber considers that the remainder of Proposed Fact No. 4 is unclear and vague, particularly in so far as it relates to an undefined SAO "government", and further finds that it is unable, after reviewing the surrounding sentences and paragraphs of the relevant Judgement, to reformulate it to meet this criterion. The Chamber will therefore not further consider Proposed Facts Nos 1 and 4 and the second sentence of Proposed Fact No. 3.

7. The Chamber also finds that Proposed Fact No. 2 is unclear in its present form in that it is lacking a time reference. However, rather than rejecting the Proposed Fact, the Chamber will reformulate it in accordance with the time frames located in paragraphs 79 and 83 of the *Lukić* Judgement in order to meet this criterion.

B. The Proposed Fact Must be Relevant to the Case

8. The Prosecution does not contest the relevance of either of the Proposed Facts being evaluated under this criterion.¹⁰ The Chamber finds that the Proposed Facts are relevant.

⁸ Decision of 16 February 2012, para. 10.

⁹ See *Lukić* Judgement, para. 78.

¹⁰ The Prosecution's objection to Proposed Fact No. 1 on this ground is not addressed in this decision as the Proposed Fact did not meet the first criterion.

C. The Proposed Fact Must not Contain any Findings or Characterizations that are of an Essentially Legal Nature

9. The Prosecution does not object to the Proposed Facts based on this criterion.¹¹ The Chamber finds that the Proposed Facts meet this criterion.

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

10. The Prosecution does not object to the Proposed Facts based on this criterion. The Chamber finds that the Proposed Facts meet this criterion.

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

11. The Prosecution does not object to the Proposed Facts based on this criterion. The Chamber finds that the Proposed Facts meet this criterion.

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

12. The Prosecution does not object to the Proposed Facts based on this criterion. The Chamber finds that the Proposed Facts meet this criterion.

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

13. The Prosecution submits that Proposed Facts Nos 2 and 3 are misleading.¹² In relation to Proposed Fact No. 2, the Chamber finds that, as reformulated by the Defence, the Proposed Fact is misleading. In particular, the Chamber notes the deletion of the word “also” from the text of the sentence found in the *Lukić* Judgement.¹³ Rather than rejecting the Proposed Fact, and in addition to including the time frames located in paragraphs 79 and 83 of the *Lukić* Judgement, the Chamber considers it appropriate to reformulate this Proposed Fact by including the preceding sentence from the *Lukić* Judgement, to which the word “also” in the original text of the Proposed Fact refers.¹⁴

¹¹ The Prosecution’s objection to Proposed Fact No. 1 on this ground is not addressed in this decision as the Proposed Fact did not meet the first criterion.

¹² Response, paras 21-22, 27. The Prosecution’s objection to Proposed Fact No. 4 on this ground is not addressed in this decision as the Proposed Fact did not meet the first criterion.

¹³ See *Lukić* Judgement, para. 82.

¹⁴ The Chamber notes that this reformulation covers the adjudicated facts of which the Prosecution requested that the Chamber take judicial notice. The Chamber therefore will not further address the Prosecution request in this respect.

14. In relation to Proposed Fact No. 3, the Chamber does not find that the remaining sentence being evaluated under this criterion is misleading and therefore will take judicial notice of it.

IV. DISPOSITION

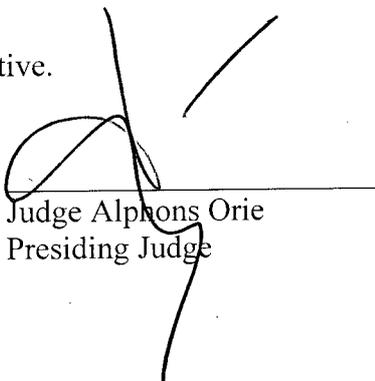
15. Based on the reasoning set forth above and pursuant to Rule 94 (B) of the Rules, the Chamber:

GRANTS the Motion in part and takes judicial notice of the following Proposed Facts with the reformulations described above:

1. On or about 14 April 1992, the Užice Corps of the JNA entered Višegrad. Serbs, who had previously left Višegrad, returned when the Užice Corps arrived, and began to arm themselves with weapons that were brought in from Serbia. The Užice Corps also supplied local Serbs in Višegrad with weapons, and provided them with military training. On 19 May 1992, the Užice Corps withdrew from Višegrad.
2. The Obrenovac Detachment was under the command of the Višegrad TO, and took orders from Vinko Pandurević.

DISMISSES the remainder of the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this Tenth day of July 2012
At The Hague
The Netherlands

[Seal of the Tribunal]