IT-98-29/1-T 5096 AT
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29 AUGUST 2007

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-98-29/1-T

Date: 29 August 2007

Original: English

IN TRIAL CHAMBER III

Before: **Judge Patrick Robinson, Presiding**
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: **Mr. Hans Holthuis**

Date: **29 August 2007**

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

DECISION ON DEFENCE REQUEST FOR JUDICIAL NOTICE OF ADJUDICATED FACTS

The Office of the Prosecutor:

Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

TRIAL CHAMBER III ("Trial 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");

BEING SEISED of the "Requête de la Défense aux Fins de Dresser le Constat Judiciaire des Faits (Article 94 B de Règlement du Procédure et de Prevue) avec le Public Annexe A" filed on 20 August 2007 ("Request"), in which the Defence requests the Trial Chamber to take judicial notice of 18 facts from the case of *Prosecutor v. Stanislav Galić*,[1] as they are presented in Annex A to the Request ("Proposed Facts");

NOTING the "Prosecution Response to the Requête de la Défense aux Fins de Dresser le Constat Judiciaire des Faits (Article 94 B du Règlement de Procédure et de Prevue) avec le Public Annexe A" ("Response") filed on 23 August 2007, in which the Prosecution objects to the judicial notice of Proposed Facts 1, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, and 18 on the ground that they do not meet the requirements established in the Tribunal's case law for judicial notice under Rule 94 (B) of the Tribunal's Rules of Procedure and Evidence ("Rules") because they are not factual findings of the *Galić* Trial Chamber or the Appeals Chamber or because they "significantly differ from the formulation" in the *Galić* Trial Chamber's Judgement ("Original Judgement");[2]

NOTING that in the Response, the Prosecution does not oppose the admission of Proposed Facts 2, 7, 8 and 9;[3]

NOTING that Rule 94 (B) of the Rules provides that a Trial Chamber may decide to take judicial notice of adjudicated facts from other proceedings of the Tribunal relating to matters at issue in the proceedings before it;

NOTING the law relating to Rule 94 (B), as established in the case law of the Tribunal, which has been set out in previous decisions on judicial notice in this case;[4]

NOTING that the Defence submits that all the Proposed Facts satisfy the requirements for judicial notice;[5]

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[1] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006.
[2] Response, paras 7 - 10.
[3] Response, para. 6.
[4] Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Prosecution's Catalogue of Agreed Facts with Dissenting Opinion of Judge Harhoff, 10 April 2007, paras 22 – 24, 27 - 30; Decision on Interlocutory

CONSIDERING that, while it asserts that the Proposed Facts are relevant to the present case, the Defence does not provide any explanation as to the Proposed Facts' relevance;[6]

CONSIDERING that among the criteria for judicial notice of adjudicated facts established by the case law of the Tribunal are:

- The fact, as formulated by the moving party, must not differ in any significant way from the formulation in the original judgement;[7]

- The fact must be distinct, concrete, and identifiable in the findings of the original judgement.[8] The Trial Chamber must consider the proposed fact in the context of the original judgement, with specific reference to the place referred to in the judgement and to the indictment period of that case;[9]

- The fact must not be unclear or misleading in the context in which it is placed in the moving party's motion;[10]

- The fact must represent the factual findings of a Trial Chamber or Appeals Chamber and must not contain any findings or characterisations that are of an essentially legal nature;[11]

CONSIDERING that Proposed Facts 1, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17 and 18 do not meet the requirements for judicial notice because an examination of the paragraphs from the

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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 16 – 17, 21 – 22.

[5] Request, para. 6.

[6] In the Response, the Prosecution does not challenge the relevance of the Proposed Facts to the present case.

[7] *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006 ("*Popović et al.* Decision"), para. 7; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, 24 March 2005 ("*Krajišnik* Decision on Third and Fourth Motions"), para. 14.

[8] *Prosecutor v. Jadranko 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 ("*Prlić et al.* Pre-Trial Decision"), para. 12; *Popović et al.* Decision, para. 6; *Krajišnik* Decision on Third and Fourth Motions, para. 14; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, Decision on Prosecution's Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92*bis*, 28 February 2003 ("*Krajišnik* February 2003 Decision"), para. 15; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003 ("*Blagojević and Jokić* Decision"), para. 16.

[9] *Krajišnik* Decision on Third and Fourth Motions, para. 14, fn. 44.

[10] *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006, para. 55; *Popović et al.* Decision, para. 8.

[11] *Krajišnik* Decision on Third and Fourth Motions, para. 15; *Popović et al.* Decision, para. 11; *Prlić et al.* Pre-Trial Decision, para. 12; *Blagojević and Jokić* Trial Decision, para. 16; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts, 10 April 2003, p. 3; *Krajišnik* February 2003 Trial Decision, para. 15.

Original Judgement on which reliance is placed in the Request indicates:

a) Proposed Fact 1, as it is formulated, differs significantly from the formulation in the Original Judgement;

b) Proposed Facts 3, 4, 5, 6, 10, 11, 12, 13 and 14 are expressions of opinion of witnesses and, as such, cannot be considered factual findings made by the *Galić* Trial Chamber and some of these Proposed Facts have also been divorced from the context in which they are located in the Original Judgement and, as a result, are misleading;

c) Proposed Facts 15, 16, 17 and18 were divorced from the context in which they are located and, as a result, are misleading representations of the *Galić* Trial Chamber's findings;

CONSIDERING that Proposed Facts 2, 7, 8 and 9 may be judicially noticed;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 94 (B) of the Rules,

HEREBY GRANTS the Defence Request in part and takes judicial notice of Proposed Facts 7, 8 and 9.

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

Judge Patrick Robinson
Presiding

Dated this twenty-ninth day of August 2007
At The Hague
The Netherlands

[Seal of the Tribunal]