



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-04-83-T

Date: 22 October 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 22 October 2007

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**ADDENDUM TO DECISION ADOPTING GUIDELINES ON THE
ADMISSION AND PRESENTATION OF EVIDENCE AND CONDUCT
OF COUNSEL IN COURT**

The Office of the Prosecutor

Mr. Daryl A. Mundis
Mr. Matthias Neuner
Ms. Laurie Sartorio
Mr. Kyle Wood
Mr. Aditya Menon

Counsel for the Accused

Ms. Vasvija Vidović
Mr. Nicholas David Robson

TRIAL CHAMBER I (“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”), having adopted its Decision Adopting Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court on 24 July 2007 (“Guidelines”), hereby issues an addendum to that Decision.

1. On 3 October 2007, Defence Counsel for Rasim Delić (“Defence”) requested the Trial Chamber to allow it to put witness statements made by another witness to the witness who was testifying, and to be allowed to reveal the identity of the statement maker to the testifying witness.¹ The Trial Chamber requested the Parties to provide it with submissions on this point.² On 15 and 16 October 2007, the Trial Chamber received the submissions of the Defence and Prosecution respectively, by way of email.

2. Having considered the Parties’ submissions, and in light of the Guidelines already in place, and **PURSUANT TO** Article 20(1) of the Statute of the Tribunal and Rules 54, 89 and 90 of the Rules, the Trial Chamber hereby **AMENDS** the Guidelines with the amendment of paragraph 11, as follows below, and the addition of the following paragraphs, which are to be inserted after paragraph 11 of the Guidelines:

11 In this respect, the Trial Chamber notes that the cross-examining party may confront a witness with the testimony³ of another witness **who has previously appeared in the present case** in order to impeach or challenge the credibility of that witness or the testifying witness. The cross-examining party shall put to the testifying witness the evidence of the previous witness *without* identifying from whom the information has come.⁴ **Where the testimony has been made by a person who has previously appeared as a protected witness or where the prior testimony has been led in private or closed session, the presentation of that testimony to the testifying witness must be done in private or closed session.** Moreover, the Trial Chamber reminds the Parties that while they may ask the witness whether or not he agrees or disagrees with the evidence of the previous testimony, the Parties should not ask witnesses to comment on the credibility of other witnesses.⁵

11 bis The Parties may confront a witness in court with the statement of another witness or transcript of prior testimony from another case before this Tribunal (hereinafter “transcript”) only where that person will come to testify in the present case. The presenting

¹ Hearing, 3 October 2007, T. 3589-3591.

² Hearing, 3 October 2007, T. 3592.

³ **The Trial Chamber considers this to include statements pursuant to Rule 92 bis, Rule 92 ter or Rule 92 quater which have been admitted in evidence.**

⁴ *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9 & IT-95-9-AR73.7, 13 Mar 2003, T. 16636; *ibid.*, 29 Apr 2003, T. 18809-10; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-T, 14 Oct 2002, T. 10654:

JUDGE AGIUS: [...] it's not right that you present the witness with information leading him to understand that another witness also coming from the political arena gives a completely different story to his with regard to some details at least.

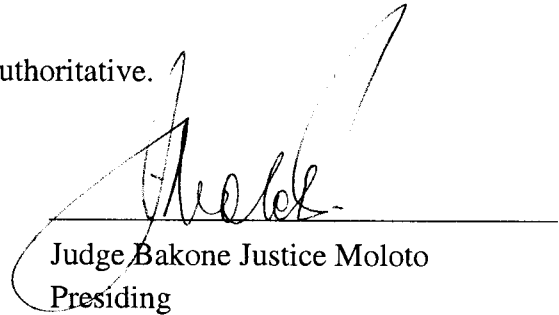
Miroslav Kvočka et al., Case No. IT-98-30/1, 28 Aug 2000, T. 4220-21. *Prosecution v. Momčilo Krajišnik*, Case No. IT-00-39-T, 05 Dec 2005, T. 19215.

⁵ *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9, 04 Jun 2002, T. 8820-8821; *Prosecutor v. Miroslav Kvočka et al.*, *ibid.*; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2, 24 Nov 1999, T. 10336-7; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-T, 14 Oct 2002, T. 10651.

party must identify to the Trial Chamber and the other party the name of the statement maker or prior witness, the date of the statement or transcript and the page references of the portion(s) of the statement or transcript which will be read out in court or referred to. However, this information shall not be disclosed to the witness in court. Where the witness statement or transcript has been made by a person who has previously appeared as a protected witness or where the prior testimony has been led in private or closed session, the presentation of that statement or transcript to the testifying witness must be done in private or closed session. Finally, the statement shall not ordinarily be admitted into evidence.

11ter Where a witness is confronted in court with the statement or transcript of another witness who is scheduled to come to testify in the present case, and where that witness ultimately does *not* testify, the Trial Chamber shall disregard the part of the testimony where the witness was confronted with the statement or transcript of the witness who ultimately did not testify.

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



Judge Bakone Justice Moloto
Presiding

Dated this twenty-second day of October 2007

At The Hague

The Netherlands

[Seal of the Tribunal]