



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: 14 January 2008

Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr. Hans Holthuis

Decision of: 14 January 2008

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON THE MOTION TO VARY 'DECISION ON
SIXTH PROSECUTION MOTION FOR ADMISSION OF
EVIDENCE PURSUANT TO RULE 92 *BIS*'**

The Office of the Prosecutor

Mr. Daryl A. Mundis
Ms. Laurie Sartorio
Mr. Matthias Neuner
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;

BEING SEISED of the Prosecution “Motion to Vary ‘Decision on Sixth Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*’” filed on 9 January 2008 (“Motion”), in which the Prosecution asks the Trial Chamber to vary its “Decision on Sixth Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*” rendered by the Trial Chamber on 11 December 2007 (“Decision”) and admit the statement of witness Ivan Negovetić (“Statement”) in its full, unredacted form;¹

NOTING that in support of the Motion the Prosecution submits that:

- On 4 December 2007, The Prosecution moved the Trial Chamber to admit into evidence the Statement in its redacted form so that it could be admitted under Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”) without the need for the witness to appear for cross-examination;²
- Once the witness Ivan Negovetić was ordered by the Decision to appear for cross-examination, Rule 92 *bis* and its prohibition against the admission of evidence that goes to the acts and conduct of the accused ceased to apply, as did any need to redact the statement;³
- “A full cross-examination on the full statement of this witness will lead [sic] a more complete record and only assist the Trial Chamber in its fact-finding duties.”⁴

NOTING the “Order for the Expedited Filing” rendered by the Trial Chamber on 10 January 2008;

NOTING that in its “Defence Response to Motion to Vary ‘Decision on Sixth Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*’” filed on 14 January 2008 (“Response”), the Defence objects to the Motion on the following grounds:

- In its Motion, the Prosecution failed to put forward any argument to show that the Decision included any error of reasoning and that “in making its Decision, all the Trial Chamber did was merely follow the course of action requested by the Prosecutor; it did nothing wrong”;⁵

¹ Motion, paras 1, 6.

² Motion, para. 2.

³ Motion, paras 3-4.

⁴ Motion, para. 5.

⁵ Response, paras 8-9.

- The Prosecution failed to show how injustice would result from the written statement remaining in its redacted form;⁶
- If the redacted parts of the Statement are now admitted into the trial record, it is likely to increase the length of the questioning considerably;⁷

NOTING that according to the jurisprudence a Chamber has inherent discretionary power to reconsider a previous decision when the interest of justice so requires;⁸

CONSIDERING that Rule 92 *bis*(C) is unequivocal in providing that not Rule 92 *bis* but Rule 92 *ter* “shall apply” to the situation where a witness whose written evidence has previously been admitted appears before the court in person;

FINDING that the provisions of Rule 92 *ter* apply to the present situation *eo ipso* and that therefore, it would be in the interest of justice to admit the Statement in its entirety;

FOR THE FOREGOING REASONS and

PURSUANT to Rule 54, 92 *bis* and 92 *ter* of the Rules;

GRANTS the Motion; and

ADMITS the Statement of witness Ivan Negovetić into evidence in its full, unredacted form, subject to him appearing for cross-examination.

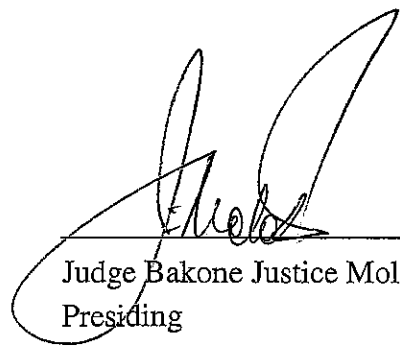
Done in English and French, the English version being authoritative.

⁶ Response, para. 9.

⁷ Response, para. 11.

⁸ See *Prosecutor v. Slobodan Milošević*, Confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, Case No. IT-02-54-AR108bis.3, 6 April 2006, para. 25, ft 40.

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Judge Bakone Justice Moloto
Presiding

Dated this fourteenth day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]