



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-95-5/18-PT

Date: 20 October 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Order of: 20 October 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER ON PROSECUTION REQUEST FOR CLARIFICATION AND PROPOSAL
CONCERNING GUIDELINES FOR THE CONDUCT OF TRIAL**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

THIS 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”) is seized of the “Prosecution Request for Clarification and Proposal Concerning Guidelines for the Conduct of Trial”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 15 October 2009 (“Request”) and hereby issues this order in relation thereto.

1. On 8 October 2009, and following submissions by the Prosecution and the Accused, the Trial Chamber issued the “Order on Procedure for the Conduct of Trial” (“Order”), in which it set out a number of guidelines for the conduct of the trial proceedings in the present case.

2. In its Request, the Prosecution asks for clarification of paragraph P of Appendix A of the Order.¹ Paragraph P states the following:

When an expert witness produces a report, that report, or part thereof, may be admitted into evidence, subject to the requirements of relevance and probative value. As a general rule, the Trial Chamber will only admit those parts of the report and further material that is put to the expert during his or her oral testimony. The sources used by an expert in compiling his or her report will not be admitted as a matter of course. Expert reports should, however, be fully referenced in order to facilitate the Trial Chamber’s determination of their probative value and, ultimately, the weight to be ascribed to them.

3. The Prosecution submits that “it has been longstanding general practice in the Tribunal and consistent with the wording, spirit and statutory scheme of Rule 94 *bis* of the Rules of Procedure and Evidence (‘Rules’) for the parties to seek admission of the entirety of a report”, and that it “seeks clarification as to whether the Trial Chamber intended to differ from this practice.”² It further submits that the Prosecution “intends to request the admittance of specific documentary evidence relied upon by an expert” and proposes a means by which it will “streamline this process”.³

4. With regard to the part of paragraph P that the Prosecution seeks clarification of, that is, the second sentence, the Chamber notes that it is not its intention to diverge from established practice and to automatically reject the admission into evidence of parts of an expert report that have not been put to the expert in court. However, it stresses that in most instances the presenting party should expect to put an expert’s report or reports to that expert in court and

¹ Request, para. 1.

² Request, paras. 2-3.

³ Request, para. 4.

clarify for the record that the report or reports were authored by that expert. The presenting party may apply to the Chamber to vary this general rule on a case-by-case basis, such as when Rule 94 *bis*(C) of the Rules is applicable.

5. In relation to the admission into evidence of source material used by an expert in compiling his or her report, the Chamber notes that the purpose of having an expert report is to assist the Chamber by providing an understandable compilation and analysis of technical material, which might not by itself be comprehensible by a lay-person. Expert reports generally should be complete and understandable in themselves, such that there is no need to tender for admission into evidence the sources used by the expert. However, should the presenting party wish to tender certain sources used by an expert in compiling his or her report, it can apply to the Chamber for their admission, either orally or in writing. The Chamber notes that the presenting party should be very selective in the sources that it tenders for admission into evidence and provide clear reasons as to why these sources should be admitted in addition to the expert report itself.

6. In addition, the Chamber notes that, in its filings, the Prosecution continues to use the "KDZ" numbers for its witnesses who have not been granted protected measures, including those who appear on the "Prosecution's Re-Submission of Notification of Order of Witnesses", filed publicly on 13 October 2009. In the interests of a public trial, and of clarity, the names of witnesses who are not protected and who are listed in the Prosecution's notifications of the order of witnesses shall be used in future filings, including on the front page of the filings. In all other instances, where possible, the Prosecution is strongly encouraged to use the names of those witnesses who are not protected, and not only their "KDZ" numbers, in its filings.

7. For these reasons, pursuant to Rule 54 of the Rules, the Trial Chamber hereby **CLARIFIES** paragraph P of Appendix A of the Order as stated in paragraphs 4 and 5 above, and **ORDERS** the Prosecution to refer to witnesses, who are listed in the Prosecution's notifications of the order of witnesses and who do not have protective measures, by their names, and not only their "KDZ" numbers, in all Prosecution filings, including on the front page of those filings.

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



Judge O-Gon Kwon
Presiding

Dated this twentieth day of October 2009
At The Hague
The Netherlands

[Seal of the Tribunal]